

United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Southern Nevada District Office
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, NV 89130
http://www.blm.gov/nv/st/en/fo/lvfo.1.html

0 \$ AUG 2009

In Reply Refer to: N-76647 2710 (NV-056)

Dear Interested Party:

The Bureau of Land Management (BLM) has prepared an environmental assessment (EA) in order to comply with the National Environmental Policy Act (NEPA) and United States District Court Order for Case No. 2:08-cv-1131-LDG (RJJ) issued by Judge George D. Lloyd for the transfer of approximately 2,880 acres of public land to Clark County, Nevada. The lands are to be used as a centralized shooting park facility. BLM transferred the subject lands to Clark County, Nevada by patent # 27-2004 -0017, issued November 26, 2003 pursuant to Public Law #107-350 enacted December 17, 2002.

The EA entitled, "Environmental Assessment P.L. 107-350, Enacted December 12, 2002 for the Conveyance of Property to Clark County, Nevada For A Shooting Park" is available for review and can be found on BLM's website at: http://www.blm.gov/nv/st/en/fo/lvfo.html. The EA is listed under the column "In The Spotlight" with the title "Clark County Shooting Park EA Information". Click on the title and you will be redirected to the EA and the draft Finding Of No Significant Impact (FONSI). A copy of this EA and the draft FONSI are also available in BLM's Public Room located at 4701 N. Torrey Pines Drive, Las Vegas, Nevada.

A 30-day review period begins August 3, 2009 and ends September 2, 2009. Written comments will be accepted by BLM and should be mailed to the following address:

Attn: Mr. Robert B. Ross, Jr. Bureau of Land Management Las Vegas Field Manager 4701 N. Torrey Pines Dr. Las Vegas, Nevada 89130

If you do not have access to a computer and would like a hard copy of the EA, you may call Supervisory Realty Specialist, Anna M. Wharton at (702) 515-5082 or Planning and Environmental Coordinator, Jeff Steinmetz at (702) 515-5097 to request one.

Sincerely,

Robert B. Ross, Jr. Field Manager

Las Vegas

U.S. Department of the Interior Bureau of Land Management

Environmental Assessment DOI-BLM-NV-S010-2009-0293-EA August 3, 2009

P.L. 107-350, Enacted December 12, 2002
For
The Conveyance of Property
To
Clark County, Nevada for a Shooting park

U.S. Department of the Interior Bureau of Land Management Southern Nevada District Office Las Vegas Field Office

Phone: 1-702-515-5000 Fax: 1-702-515-5010



FINDING OF NO SIGNIFICANT IMPACT FOR

P.L. 107-350, Enacted December 12, 2002 for the Conveyance of Property To Clark County, Nevada for a Shooting park DOI-BLM-NV-S010-2009-293-EA

I have reviewed the final Environmental Assessment (EA), numbered DOI-BLM-NV-S010-2009-293-EA. I have determined that the proposed action listed above and identified in the EA conforms to the Las Vegas Valley Resource Management Plan and is consistent with the plans and policies of neighboring local, county, state, tribal and Federal agencies and governments. In addition, after consideration of the environmental effects as described in the EA and incorporated herein, I have determined the proposed action will not significantly affect the quality of the human environment and that preparation of an additional EIS is not required. This determination is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

Context:

The 107th Congress of the United States of America through Public Law 107-350 enacted December 17, 2002 (the "Act"), mandated that certain public lands located in Clark County, Nevada, be conveyed to Clark County, Nevada, for use as a centralized shooting facility. In this Act, Congress found that –

- 1.) The Las Vegas area has experienced such rapid growth in the last few years that traditional locations for target shooting are now too close to populated areas for safety; and
- 2.) There is a need to designate a centralized location in the Las Vegas Valley where target shooters can practice safely; and
- 3.) A central facility is also needed for persons training in the use of firearms, such as local law enforcement and security personnel.

The purposes of the Act are –

- 1.) To provide a suitable location for the establishment of a centralized shooting facility in the Las Vegas Valley; and
- 2.) To provide the public with
 - A) Opportunities for education and recreation; and
 - B) A location for competitive events and marksmanship training.

The public lands were to be conveyed by the Secretary of the Interior as soon as practicable after the date of enactment of the Act, subject to valid existing rights, for no consideration, all right, title and interest of the United States in and to the identified public lands, containing approximately 2,880 acres. The lands conveyed under this Act shall be used by Clark County for the purposes described in the Act and not disposed of by the County.

The Act includes a reversionary clause stating that if Clark County ceases to use any of the conveyed lands for the purposes described in the Act, title shall revert to the United States, at the option of the United States, and that Clark County, Nevada shall be responsible for any reclamation necessary to revert the parcel to the United States.

The Act grants no discretion to the Secretary whether to transfer the specified lands to Clark County for a centralized shooting facility. Rather, the Secretary is to ensure the lands are transferred as directed by Congress.

Intensity:

1) Impacts that may be both beneficial and adverse.

The EA has considered both beneficial and adverse impacts of the land sale/conveyance. The sale/conveyance results in development of a centralized shooting facility to be used for educational, recreational and competitive events and marksmanship training in the use of firearms. The educational aspect should have long term indirect beneficial impacts whereas the noise resulting in the development and use of the site as a shooting facility will increase noise but not above established standards.

A one mile buffer zone from shooting has been provided on the southern edge of the property which is located nearest to private residential areas.

2) The degree to which the proposed action affects public health or safety.

The proposed sale/conveyance itself does not directly affect public health and safety, although correctable issues might occur with development of the shooting facility. Clark County through its zoning and permitting processes will address any and all issues associated with development of this parcel.

The Clark County centralized Shooting Park Facility has been designed to provide buffers on all four boundaries. All weapon ranges are pointed north, away from populations, and all rifle and pistol ranges are designed to capture all of the discharged projectiles. A one mile buffer zone from shooting has been provided on the southern edge of the property which is located nearest to private residential areas. There is a large buffer zone along the west boundary and a quarter mile buffer zone along the northern boundary. The conceptual master plan displays all the projectile fall zones. Projectile fall zones are laid out as 300 yards and are all located and contained on the shooting facility property. The average projectile distance for target shot shell loads is approximately 175 yards. All projectiles and those containing lead will be contained in internal drains and through a double settling basin to prevent materials from escaping the site. The rifle and pistol ranges are recessed into the property and protected by berms and backstops meeting the criteria established by shooting range design safety standards. In addition, the northern drain

is located south of the northern property line by 56 feet to protect and mitigate any potential impacts to Desert National Wildlife Refuge property.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

Fossil resources must be considered and evaluated as "scientific values" under the Federal Land Policy and Management Act (FLPMA) of 1976. The Las Vegas Formation in the Upper Las Vegas Valley Wash contains the remains of extinct Pleistocene animals such as ground sloths, mammals, and camels. The San Bernardino County Museum (SBCM) conducted a pedestrian survey of those portions of the Las Vegas Formation within the parcel proposed for transfer. A total of 33 localities were recorded. Fossil remains are apparent on the surface and there is a high probability that fossils lie beneath. Clark County plans to avoid impacts to fossil resources by restricting construction activities to those areas lying outside the wash.

No other unique characteristics were identified on this parcel.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Congress with passage of this law and other local governments as shown through their letters of support favor this land sale/conveyance.

Since passage of the law on December 17, 2002 it was known that a Shooting Park Facility was identified for this parcel, at that time there was no known controversy.

Case No. 2:08-cv-1131-LDG(RJJ), was filed in United States District Court, District of Nevada, by the Residents for the Relocation of the Clark County Shooting Complex, LLC V. Department of Parks and Recreation, et al. The residents were seeking a preliminary injunction seeking to halt construction of the shooting complex, pending prosecution of the lawsuit. BLM was included in this lawsuit for not completing a NEPA analysis for the sale/conveyance.

The hearing was conducted Wednesday, April 8, 2009, with Judge Lloyd D. George, United States District Judge, presiding. Having considered the papers and pleadings, the evidence received from the parties, and the arguments, the court granted in part and denied in part Clark County's motion to dismiss and denied the residents' motion for a preliminary injunction. The BLM admitted not having completed a NEPA document and committed to the court to have one prepared by August 3, 2009. A copy of Judge George's Order is attached as reference.

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

There are no highly uncertain or unique or unknown risks from the proposed action. The Disposal EIS and this EA did not identify any uncertain or unique unknown risks.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The proposed action does not establish, but rather is consistent with, precedent established pursuant to Congressional intent as expressed in the legislation and other federal laws, regulations and policies covering actions like this.

The State of Nevada is over 80 percent public land and privatization of that land is supported by many levels of government. BLM has disposed of thousands of acres in the Las Vegas Field Office Area, both in the Las Vegas Valley and outside the Las Vegas Valley in accordance with the Las Vegas Resource Management Plan and applicable legislation. In the Las Vegas Valley, BLM's disposal actions are analyzed by its 2004 Disposal EIS.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

The proposed action is essentially the transfer of title from the Federal government to a private owner. There are no direct impacts resulting from the transfer of title. However, the indirect impacts are that the lands will be eligible for private development. Development scenarios for the land BLM sells in the Las Vegas Valley are analyzed in the Disposal EIS. The EIS also performs a full cumulative impact analysis of development in the Valley through 2018. The EA for this action tiers to the Disposal EIS.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.

This sale/conveyance does not have any adverse affect on districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or cause loss or destruction of significant resources. This is also addressed in paragraph #3 above.

9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.

Consultation with the U.S. Fish and Wildlife Service for the Disposal EIS (1-5-96-F-023R.3) indicates that activities occurring within the sale/conveyance parcel may affect the desert tortoise or its habitat. The disposal of BLM lands and the transfer of title would not have a direct impact on threatened, endangered or special status species. Subsequent development and change in land use would result in indirect impacts through loss of thermal cover, vegetation and forage, mortality and harassment of individual animals, decreased local genetic flow, and decrease in habitat value of adjacent remaining "wildland" areas due to increased human activity in the area. Direct incidental take of desert tortoises and their habitat would be covered under the No rare plants were present, and therefore, no impacts are expected.

10) Whether the action threatens a violation of Federal, state, or local law or requirements imposed for the protection of the environment.

The proposed action will not violate or threaten to virequirement imposed for protection of the environment SNPLMA and the Federal Land Policy and Manager The proposed action is specifically exempted from the 176 (C) of the Clean Air Act, according to 40 CFR 9	nent. The proposed action is consistent with ment Act for the sale/conveyance of lands. The General Conformity Regulations, Section
Robert B. Ross, Jr. Field Manager Las Vegas	Date

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 1 of 16

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UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

RESIDENTS FOR THE RELOCATION OF THE CLARK COUNTY SHOOTING COMPLEX, LLC. V. DEPARTMENT OF PARKS AND R.

Plaintiff,

DEPARTMENT OF PARKS AND RECREATION, et al.,

Defendants.

Case No. 2:08-cv-1131-LDG (RJJ)

ORDER

The plaintiffs are residents and homeowners near a shooting complex that defendant Clark County is building on approximately 2900 acres of land located north of Moccasin Road, between Decatur Boulevard and Buffalo Drive. The residents are moving for a preliminary injunction (#44) seeking to halt construction of the shooting complex pending the prosecution of this lawsuit. Both Clark County and the United States Department of the Interior, Bureau of Land Management (BLM) oppose the motion (## 52, 60, 66). In addition, Clark County moves to dismiss the complaint (#53) or, in the alternative, moves for summary judgment (#58). The residents oppose Clark County's motions (## 62, 63).

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 2 of 16

 On Wednesday, April 8, 2009, this court received evidence and heard arguments on these motions.

Having considered the papers and pleadings, the evidence received from the parties, and the arguments, the court will grant in part and deny in part Clark County's motion to dismiss, and will deny the residents' motion for a preliminary injunction.

<u>Background</u>

Pursuant to Public Law 107-350 (passed by Congress in December 2002, and signed by the President in January 2003), the United States executed a Patent on November 26, 2003, that conveyed all right, title and interest to approximately 2900 acres of land north of Moccasin Road, between Decatur Boulevard and Buffalo Drive Shooting Park land to Clark County. Although Public Law 107-350 required BLM to convey this land to Clark County, section §1(f) of that law authorized the BLM to "require such additional terms and conditions in connection with the conveyance as the Secretary [of the Interior] considers appropriate to protect the interests of the United States." The BLM did not prepare an environmental assessment prior to conveying the land to Clark County.

In November 2002, the Clark County Sport Shooting Park Advisory Committee began meeting regarding the development of a shooting park on the 2900 acres of land. Clark County noticed each meeting of the Advisory Committee in accord with Nevada's open meeting law: Nev. Rev. Stat. 241.020(3).

In September 2005, Clark County applied to change the zoning of the land from Rural Open to Public Facility. The County mailed notice of the zone change application, ZC-1489-05, to all property owners within 3,950 feet of the subject land. Clark County also published notice of ZC-1489-05 in both the Las Vegas Review Journal and the Las Vegas Sun, and posted ZC-1489-05 at four locations on the land. The Clark County Planning Commission held a public hearing on ZC-1489-05 on October 20, 2005. During that meeting, the Planning Commission approved the zone change. A Notice of Final Action

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 3 of 16

was issued on November 29, 2005. The statute of limitations for seeking judicial review of the zone change expired on December 24, 2005.

In January 2008, Clark County began construction of the first phase of the shooting park.

In August 2008, the residents filed their original complaint, which was subsequently amended to allege seven claims: (1) Declaratory Relief, (2) Injunctive Relief, (3) Violation of Due Process Rights, (4) Violation of Clark County Code §30.36 requiring Notice of Official Zoning Maps and Districts, (5) Violation of Clark County Code §30.68.020 regarding noise, (6) Nuisance pursuant to Nev. Rev. Stat. 40.140, and (7) Violation of the National Environmental Policy Act.

Legal Standard for Motion to Dismiss

Clark County's motion to dismiss, brought pursuant to Fed. R. Civ. P. 12(b)(6), challenges whether the plaintiffs' complaint states "a claim upon which relief can be granted." In ruling upon this motion, the court is governed by the relaxed requirement of Rule 8(a)(2) that the complaint need contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." As summarized by the Supreme Court, a plaintiff must allege "only enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1974 (U.S. 2007). Nevertheless, while a complaint "does not need detailed factual allegations, a plaintiff's obligations to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id., (citations omitted). In deciding whether the factual allegations state a claim, the court accepts those allegations as true, as "Rule 12(b)(6) does not countenance . . . dismissals based on a judge's disbelief of a complaint's factual allegations." Neitzke v. Williams, 490 U.S. 319, 327 (1989). Further, the court "construe[s] the pleadings in the light most favorable to the

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 4 of 16

nonmoving party." Outdoor Media Group, Inc. v. City of Beaumont, 506 F3.d 895, 900 (9th Cir. 2007).

Legal Standard for Motion for Summary Judgment

In considering Clark County's motion, in the alternative, for summary judgment, the court performs "the threshold inquiry of determining whether there is the need for a trial—whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). To succeed on a motion for summary judgment, the moving party must show (1) the lack of a genuine issue of any material fact, and (2) that the court may grant judgment as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

A material fact is one required to prove a basic element of a claim. *Anderson*, 477 U.S. at 248. The failure to show a fact essential to one element, however, "necessarily renders all other facts immaterial." *Celotex*, 477 U.S. at 323.

"[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id.* "Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S. at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the claim or defense that the motion for summary judgment places in issue, the moving party can meet its initial burden on summary judgment "by 'showing'—that is, pointing out to the

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 5 of 16

district court—that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325.

Once the moving party meets its initial burden on summary judgment, the non-moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro. 56(e). As summary judgment allows a court "to isolate and dispose of factually unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). The allegations or denials of a pleading, however, will not defeat a well-founded motion. Fed. R. Civ. Pro. 56(e); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

Legal Standard for a Motion for Preliminary Injunction

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense Counsel, Inc., ___ U.S. __, 129 S.Ct. 365, 374 (2008). In Winter, which concerned a National Environmental Policy Act claim, the Supreme Court reiterated that "plaintiffs seeking preliminary injunction [must] demonstrate that irreparable injury is likely in the absence of an injunction." Id., at 375 (emphasis original). In so doing, the Court expressly rejected the Ninth Circuit's standard permitting a grant of preliminary relief upon a showing of a possibility of irreparable injury. Id.

Analysis

The residents' complaint alleges four substantive theories: (1) that Clark County violated the 14th Amendment's due process clause by failing to give adequate notice to the residents of its intention to build the shooting park by (a) failing to provide adequate notice of the Advisory Committee meetings, and by (b) failing to post an Official Zoning Map within one assessable mile of the shooting complex land; (2) that Clark County improperly zoned

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 6 of 16

the land as a Public Facility in violation of Clark County Code 30.36, rather than General Commercial or as Recreational Vehicle Park; (3) that the noise of construction and use of the shooting complex will violate Clark County Code 30.68.20 and, as such, it will be a nuisance in violation of Nev. Rev. Stat. 40.140; and (4) that the Bureau of Land Management failed to complete an Environmental Impact Statement before conveying the land to Clark County.

Due Process/Zoning Law Claims

As noted, the resident's due process claim very broadly alleges that Clark County violated the 14th Amendment's due process clause by failing to give adequate notice to the residents of its *intention* to build the shooting park. The plaintiffs, however, have not offered any citation to law or statute that suggests a mere *intention* to build a shooting park triggers a constitutional due process duty. Rather, any such constitutional due process duty arises from specific events that move the intention toward realization. Construed broadly, the residents have identified two events in their complaint to which they argue a due process right attached.¹ First, the Advisory Committee held a series of public meetings concerning the shooting park. Second, developers sold homes in residential developments whose border was less than one mile from the boundary of the shooting park land.

Regarding the meetings of the Advisory Committee, the residents allege that Clark County noticed the meetings in local newspapers and in flyers posted in "three zip codes throughout the city," for which the closest location was the Desert Breeze Community Center about 10 miles away from their homes. These notices, the residents allege, lacked "the critical information of the exact location of the [shooting] complex and its robust size in relation to the surrounding development." Notice of the meetings was not posted at local

While Clark County argues that a due process right did not attach to any of these events, it further argues that it provided the required notice. As the court finds that the required notice was provided, it will not address whether the plaintiffs had a due process right to receive that notice.

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 7 of 16

schools, churches, post offices, or community centers. As summarized within their claim for declaratory relief, the residents claim that Clark County "[f]ailed to provide statutory requisite disclosures to Plaintiffs . . . in violation of [their] due process rights."

The residents' complaint does not cite to any specific statutory notice provision that they allege Clark County violated in providing notice of the Advisory Committee meetings. In moving to dismiss, Clark County asserts that it complied with Nevada's open meeting law codified at Nev. Rev. Stat. §241.020. That statute provides that notice must be posted at (a) the principal office of the public body or at the meeting place, and (b) at least three other, separate, prominent locations within the jurisdiction of the governing body. Section 241.020 further provides that the notice shall include (a) the time, place, and location of the meetings, (b) a list of locations where notice has been posted, (c) and an agenda, including a clear and complete statement of topics to be discussed and a period devoted to comments from the public. Clark County has submitted, into evidence, several exemplars of the notice of Advisory Committee meetings that were posted. These examples clearly establish that Clark County complied with the requirements of §241.020.

The residents' claim that Clark County did not post Official Zoning Maps within one assessable mile also fails. Clark County Code §30.36.040 imposes a duty to disclose the zoning and master plan designations of surrounding properties upon *sellers* of residential property. Section 30.36 does not impose a duty upon the county to post zoning maps. Indeed, the residents concede in their opposition that this duty falls upon the developers and sellers of residential property.

Accordingly, the court will grant Clark County's motion as to the residents' due process claim and their zoning claim to the extent that it alleges Clark County failed to post a zoning map, as such claims are without merit.

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 8 of 16

Clark County Code §30.36 Claim²

The residents also allege Clark County violated §30.36 of the County Code by improperly zoning the land for the shooting complex as a Public Facility rather than General Commercial and Recreational Vehicle Park. They argue that, because the shooting complex will also include a restaurant and pro shop, the land should have been zoned as General Commercial rather than Public Facility. They further argue that, because the shooting complex will include an overnight area for recreational vehicles, the land should have been zoned as Recreational Vehicle Park. The residents have not offered any argument that the <u>only</u> use of the land will be General Commercial or Recreational Vehicle Park.

As noted by Clark County in moving to dismiss and in opposing the residents' motion for a preliminary injunction, §30.08.030 defines "Public Facility" as "any infrastructure facility, building, structure, service, or combination thereof, intended for use by the general public or land approved for such use, that is owned, leased, operated, and/or controlled by a local, state, or federal governmental entity." The definition elaborates that a public facility may include "facilities such as airports, bus barns, golf courses, convention centers, and universities."

The plaintiffs have not shown, or even argued, that the shooting complex does not fall within the definition of Public Facility. Rather, the residents argue only that it should have been designated differently, such as Commercial because it will also include a

In their complaint, the residents' claim that Clark County violated §30.36.040 of the Clark County Code is separate and distinct from their Due Process claim. Further, the §36.30.040 claim does NOT allege a violation of the 14th Amendment Due Process clause, and the Due Process claim does NOT allege that Clark County violated the 14th Amendment by failing to comply with §30.36.040.

Nevertheless, in their motion for a preliminary injunction, the plaintiffs have placed their §30.36.040 arguments in the same section of their memorandum as their due process arguments. They have not, however, provided any argument that these alleged violations of §30.36.040 also violated the 14th Amendment's due process clause.

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 9 of 16

restaurant and pro shop. The definition of Public Facility in §30.36.020 makes clear, however, that the presence of some commercial enterprise does not require that the land be zoned commercial. Common experience instructs that airports, which the code expressly identifies as Public Facilities, house restaurants and shops. Similarly, public golf courses, which are included as a type of public facility, often include pro shops and some food service. Accordingly, the court will grant Clark County's motion as to the residents' claim that the shooting complex land was improperly zoned as a Public Facility.

Noise Ordinance Claim.

The plaintiffs argue that, when the shooting complex becomes operational, the noise levels created by gunfire at the shooting park will violate Clark County's noise ordinance, and thus be a nuisance.³ In support of this argument, the residents rely upon the opinion of Dr. Douglas D. Reynolds, who performed an "analytical environmental sound analysis of the potential impact of the impulse sound from weapon discharges" at the Shooting Park.⁴ Dr. Reynolds opined that a discharging weapon in the Shooting Park would, at the location of the residents' homes, create a sound level exceeding that currently permitted by the County's noise code.

In response, Clark County argues that (a) the claim is not ripe because the Shooting Range is not yet operational, and thus no noise violations <u>are</u> occurring (or will occur imminently) because of gun fire, and (b) that the claim is without merit because its own testing of gunfire, at the location of the shooting park, establishes that gunfire at the

In their complaint, the plaintiffs also allege that construction of the shooting complex will violate the County's noise ordinances. As pointed out by Clark County, however, its noise ordinance specifically exempts construction. The residents have not offered any argument to the contrary. Accordingly, the claim fails to the extent it relies upon the noise of construction.

Dr. Reynolds did not perform any field tests of gunfire at the shooting park or at any other location. Rather, his report indicates that he relied upon some gunfire data taken from a website, and that he performed a mathematical analysis upon that data.

tase 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 10 of 16

1 locations of the shooting ranges inside the park will not cause noise levels exceeding 2 permitted levels at the residents' homes.

The court will dismiss the claim as premature, and will not address the merits of the sound levels that will occur at the edge of the residential developments. As the shooting complex is not yet operational, there is not yet any gunfire from any planned shooting range or any shooting range currently under construction at the complex. The court cannot agree with plaintiffs that "questions of fact exist regarding the extent of said noise violations" because, as of yet, the shooting complex is not built. Stated otherwise, while questions of fact might arise in the future, those questions do not currently exist as there is not yet any gunfire. A claim that the gunfire will, at some future point, violate prescribed levels is speculative at best. Any effort to resolve the potential questions of fact would require waiting until the shooting park is constructed. Accordingly, the court will dismiss the plaintiffs' noise claims.

National Environmental Protection Act (NEPA) Claim.

Stated succinctly, the plaintiffs argue that the Bureau of Land Management should have performed an Environmental Impact Statement (EIS) prior to conveying the land or disbursing federal funds to Clark County to construct the park.

Initially, the court would note that the claim must be dismissed to the extent that the plaintiffs seek monetary damages for the alleged NEPA violations.

Clark County contends that the claim should be dismissed because the land conveyance was at the direction of Congress, which is not an agency of the United States, and which is not required by the NEPA to perform an EIS. The Bureau of Land

The Plaintiffs' proffer of evidence regarding gunfire in the desert near their homes fails for several reasons. First, the plaintiffs failed to provide competent evidence regarding the location of that gunfire, only that a resident heard gunfire. Second, the plaintiffs did not offer any evidence, competent or otherwise, that the gunfire occurred in the factual context of the shooting range that Clark County is constructing.

Case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 11 of 16

Management, however, has indicated that "it agrees that some level of NEPA analysis should have been conducted" prior to the transfer of land from the United States to Clark County.

The court would also note that, "[u]sually, the federal government is the only proper defendant in an action to compel compliance with NEPA." Laub v. U.S. Dep't. of the Interior, 342 F.3d 1080, 1091-92 (9th Cir. 2003). The Ninth Circuit, however, has also recognized an exception, providing that "non-federal defendants may be enjoined if federal and state projects are sufficiently interrelated to constitute a single federal action." Id. The evidence presented to the court indicates that Clark County is implementing the shooting park, but that the land and all or nearly all of the funding is being provided by the federal government. Accordingly, the court will not dismiss the NEPA claim as against either Clark County or the BLM.

Given the BLM's acknowledgment that some level of NEPA analysis should have been performed, the plaintiffs have shown a likelihood of success on the merits of their NEPA compliance claim. The next issue is whether the plaintiffs can meet their burden of showing irreparable harm. The residents argue that, as they have shown a strong likelihood of success on the merits, Ninth Circuit precedent establishes that they need only show a possibility of irreparable harm. In making this argument, the residents rely exclusively on Ninth Circuit decisions preceding the Supreme Court's 2008 decision in Winter. As noted previously, in Winter the Supreme Court expressly rejected the Ninth Circuit's "possibility of irreparable harm" standard, and instead reiterated that, at a minimum, the plaintiff's burden is to show that "irreparable harm is likely in the absence of an injunction." Further, as stated by the Supreme Court, "[a]n injunction is a matter of equitable discretion; it does not follow from success on the merits as a matter of course."

ase 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 12 of 16

Having reviewed the arguments and evidence, the court finds that the plaintiffs have not met their burden of offering evidence establishing that irreparable harm is likely in the absence of an injunction. The plaintiffs' motion for a preliminary injunction seeks to enjoin the construction of the shooting complex that was commenced eight months before they filed the present suit. The "absence" of this injunction is that construction on the initial phase of the shooting complex will continue through to completion. Accordingly, the question before the court is what irreparable harm have the residents shown they will suffer, or imminently suffer, if Clark County continues its construction activities.

The first irreparable harm raised in the residents' moving papers concerns flood control. Even when broadly construed, however, the residents' arguments regarding flood control and irreparable harm are imprecise and ambiguous. The residents have proffered only the following facts regarding flood control. Clark County requested \$2 million of SNPLMA⁶ funds to build flood control measures to protect assets of the park, and that this request was not granted. The residents do not provide any evidence of the reason the request was denied. In its request for the \$2 million, Clark County noted that, if designed to meet Regional Flood Control standards, the cost of flood control to protect the site would have cost \$48 million. Not once, in their moving papers, their complaint, or their arguments to this court, have the residents identified the imminent, irreparable harm they will suffer because Clark County was not awarded \$2 million for flood control if construction continues.

While the residents clearly assert their conclusion that they will be irreparably harmed, they do not identify what that irreparable harm is. Perhaps the plaintiffs intend for the court to speculate that, because Clark County seeks money for flood control, construction of the shooting park has increased the risk of flooding to their properties. The

Southern Nevada Public Land Management Act of 1998.

ase 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 13 of 16

 court will not engage in such speculation. The sparse record created by the plaintiffs concerning flood control does not even permit the court to identify any impact, much less irreparable harm, that water flowing across the shooting park will impose upon the residents if construction continues.

As best as the court can surmise, and construed broadly, the residents' second irreparable harm argument is that, if construction of the shooting park continues, they will be irreparably harmed by their increased risk of being accidentally injured by gunfire once the shooting park begins operating near to their residences and near to the schools their children attend. The residents' argument fails for several reasons. First, they have not offered any evidence that the presence of an operating shooting range near to a residential neighborhood increases the risk to residents of the neighborhood of accidental injury from the discharge of firearms. Second, even had the residents offered such evidence, they seek to halt the ongoing construction of the shooting park rather than the operation of the shooting park. As the shooting park is not yet operational, no current or imminent risk exists of an accidental injury resulting from the operation of the shooting park.\(^7\) Stated otherwise, the residents' argument of irreparable harm is not only unsupported by the evidence but, even if so supported, the argument is premature.

Finally, in their reply and at the hearing, the residents allude to a third irreparable harm: that the construction of the shooting park may result in unknown and unforeseeable harm to the environment, which harm would be revealed by the required NEPA environmental analysis. As noted by the Supreme Court in *Winter*, "[p]art of the harm NEPA attempts to prevent in requiring an EIS is that, without one, there may be little if any information about prospective environmental harms and potential mitigating measures."

At the hearing, the residents made clear that their opposition to the shooting park is not whether it operates at some location, but only whether it operates at the location near their homes.

Document 71

Filed 05/08/2009

Page 14 of 16

129 S.Ct. at 377. The Court also summarized, however, that "[w]hen the Government conducts an activity, 'NEPA itself does not mandate particular results.' Instead, NEPA imposes only procedural requirements to 'ensur[e] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Id.*, *quoting Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-350, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).

The difficulty presented by the residents' argument is that the record establishes they are seeking to enjoin <u>further</u> construction activity at the shooting park. As the plaintiffs have alleged, construction of the shooting park began in January 2008. The underlying suit was not filed until August 2008. Faced with a motion to dismiss, the plaintiff at that time (which plaintiff is no longer a party to this suit) moved for leave to amend its complaint. The court granted that motion, and the residents then substituted themselves as plaintiffs in the stead of the original plaintiff in a first amended complaint that was filed in February 2009. The plaintiffs then filed their motion for preliminary relief near the end of February 2009.

The shooting park has been designed so that, when all phases and modules are fully built, the shooting ranges and other facilities will occupy 900 of the 2900 acres of land. Further, of those 900 acres, the funded construction activities that would be halted by an injunction concern only a fraction of that acreage. That fraction, however, has been under construction since January 2008. Any harm to the environment of that acreage has already occurred and will not be averted by enjoining further construction on that fraction.

The court also finds that the residents have not shown that a balancing of the equities and public interest favors a decision to enjoin further construction. In its moving papers, the residents did not even address the balancing of the equities. In its reply, the residents cited to a district court decision in *State of California v. Bergland*, 483 F.Supp. 465 (E.D. Cal. 1980), aff'd in part, rev'd and remanded on other grounds, for the

base 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 15 of 16

proposition that "once a substantial NEPA violation has been shown, an injunction should issue without detailed consideration of traditional equity principles. . . ." The residents concluded that, because the BLM acknowledged the need to perform some level of a NEPA environmental analysis, the balance of equities tipped in their favor.

As stated by the Supreme Court in *Winter*, which analyzed the application of the preliminary injunction test to an alleged NEPA violation, "[i]n each case, courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 129 S.Ct. at 376, *quoting Amoco Production Co. v. Gambell*, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987). That a NEPA violation may have occurred does not relieve plaintiffs seeking an injunction to ensure NEPA compliance from their burden of showing that the equities balance in their favor. In seeking to show that the equities favor the halting of construction, the plaintiffs cannot rely solely upon the BLM's statement that it will perform an environmental analysis.

The plaintiffs seek to enjoin further construction of the shooting park. During the evidentiary hearing, Clark County offered evidence of the significant impact that this would have on those currently employed in constructing the shooting park.

The court would note that the only legal claim remaining before the court is that the BLM must prepare a NEPA environmental analysis. Clark County, a non-federal entity, remains a defendant only because it is the entity constructing a shooting park with federal funds, but without any other federal oversight once those funds are disbursed.

Nevertheless, a paucity exists in the the residents' arguments and evidence regarding the redress available for actions already completed by the BLM, including the conveyance of the land and the funds already disbursed to Clark County for the design and construction of the shooting park. The plaintiffs have not offered any argument or evidence that the BLM can alter its past, completed actions concerning the existing, funded construction of the shooting park. The only evidence before the court suggests that any impact from the

case 2:08-cv-01131-LDG-RJJ Document 71 Filed 05/08/2009 Page 16 of 16

BLM's ongoing involvement in the shooting park will be through future funding. By contrast, Clark County's current construction activities were commenced in 2008 and rest upon these prior actions of the BLM. As such, there appears to be little basis to enjoin that construction to ensure that the BLM completes its environmental analysis before taking any future action.

Rather, the BLM has already filed with this court its proposed schedule for completing the Environmental Analysis by about August 3, 2009. At that time, a determination can be made whether an Environmental Impact Statement is required, or whether the additional 30-day period would commence for review of the "finding of no significant impact."

Accordingly, for good cause shown,

THE COURT **ORDERS** that Clark County's Motion to Dismiss (#53) is GRANTED as to Claims 5 and 6; and is GRANTED as to Claim 7 to the extent such claim seeks monetary damages; and is GRANTED as to Claims 1 and 2 to the extent the plaintiffs seek declaratory and injunctive relief for substantive claims made in Claims 5 and 6. The motion to dismiss is DENIED in all other respects.

THE COURT FURTHER **ORDERS** that Clark County's Motion, in the alternative, for Summary Judgment (#58) is GRANTED as to Claims 3 and 4; and is GRANTED as to Claims 1 and 2 to the extent the plaintiffs seek declaratory and injunctive relief for substantive claims made in Claims 3 and 4. The motion for summary judgment is DENIED in all other respects.

THE COURT FURTHER **ORDERS** that Plaintiffs' Revised Motion for Preliminary Injunction (#44) is DENIED.

DATED this ____ day of May, 2009.

Lloyd D. George United States Dist

United States District Judge

U.S. Department of the Interior Bureau of Land Management

Environmental Assessment DOI-BLM-NV-S010-2009-0293-EA August 3, 2009

P.L. 107-350, Enacted December 12, 2002
For
The Conveyance of Property
To
Clark County, Nevada for a Shooting park

U.S. Department of the Interior Bureau of Land Management Southern Nevada District Office Las Vegas Field Office

Phone: 1-702-515-5000 Fax: 1-702-515-5010



TABLE OF CONTENTS

Intro	duction	. 1
1.0	Location of Proposed Action	. 2
1.1	Conformance with Applicable Land Use Plan	. 2
1.2	Need for Proposed Action	. 2
1.3	Relationship to Statutes, Regulations and Agency Jurisdiction	. 2
1.4	Relationship to Community Development Plans	. 3
2.0	Proposed Action	. 3
2.1	No Action Alternative	. 3
2.2	Alternatives Considered but Eliminated from Detailed Study	. 3
3.0	Affected Environment	. 4
	A. Summary	4
	B. Botany	. 5
	C. Threatened and Endangered Species/Special Status Species	. 5
	D. Migratory Bird Treaty Act	. 6
	E. Wildlife	. 6
	F. Soils	. 6
	G. Air Resources	. 6
	H. Water Resources	. 7
	I. Flood Plains	. 7
	J. Cultural and Paleontological Resources	. 8
	K. Hazardous Materials	. 8
	L. Environmental Justice	. 8
	M. Land Uses	.9
	N. Transportation	10
	O. Noise	11
4.0	Environmental Impacts of the Proposed Action	11
	A. Description of Impacts for the Proposed Action	11
	B. Botany	11
	C. Threatened and Endangered Species/Special Status Species	12
	D. Wildlife	13
	E. Migratory Bird Treaty Act	13
	F. Air Quality	14
	G. Soils	14
	H. Water Resources	15
	I. Flood Plains	15
	J. Hazardous Material Assessment/Inspection	16
	K. Cultural and Paleontological Resources	
	L. Environmental Justice	16
	M. Lands	16
	N. Transportation	
	O. Noise	
4.1	No Action Alternative Impacts	
4.	1.1 Descriptions of Impact for No Action	
	i i	

	B. Threatened and Endangered Species/Special Status Species	. 19
	C. Wildlife	. 19
	D. Migratory Bird Treaty Act	. 19
	E. Air Quality	. 20
	F. Soils	. 21
	G. Water Resources	. 21
	H. Flood Plains	. 21
	I. Hazardous Material Assessment/Inspection	. 21
	J. Cultural and Paleontological Resources	
	K. Environmental Justice	
	L. Noxious Weeds	. 22
	M. Noise	. 23
	N. Transportation	
4.2	Cumulative Impact Assessment	
4.	2.1. Proposed Action	
	A. Botany	
	B. Threatened & Endangered Species/ Special Status Species	
	C. Migratory Bird Treaty	
	D. Soils	
	E. Air Quality	
	F. Water Resources	
	G. Floodplains	
	H. Cultural and Paleontological Resources	
	I. Noxious Weeds	
	J. Transportation	
	K. Noise	
4.	2.2 No Action Alternative	
	A. Botany	
	B. Threatened & Endangered Species/ Special Status Species	
	C. Migratory Bird Treaty	
	D. Soils	
	E. Air Quality	
	F. Water Resources	
	G. Floodplains	
	H. Cultural and Paleontological Resources	
	I. Environmental Justice	
	J. Transportation	
	K. Noise	
4.3	Description of Mitigation Measures and Residual Impacts	
5.0	Persons/Agencies Consulted.	
6.0	References	
-		-

Appendix 1 P.L. 107-350

Appendix 2: Resolutions and Letters Supporting Regional Shooting Park

Appendix 3: Cultural Resources

Exhibit 1: Shooting Park Map

Exhibit 2: NDEP Approval Ltr – Lead Mitigation Plan

Exhibit 3: Bureau's Approval Ltr

Exhibit 4: Population Change and Distribution

Exhibit 5: BLM's T&E Species No Affect-May Affect Determination

Exhibit 6: EPA Best Management practices Certification for Clark County Shooting Park

Environmental Stewardship Plan

ENVIRONMENTAL ASSESSMENT P.L. 107-350, ENACTED DECEMBER 12, 2002 FOR

THE CONVEYANCE OF PROPERTY TO CLARK COUNTY, NEVADA FOR A SHOOTING PARK FEDERAL LAND DISPOSAL LAS VEGAS FIELD OFFICE

ENVIRONMENTAL ASSESSMENT

EA Number: DOI-BLM-NV-S010-2009-293 EA

Serial/Case File #: N-76647

Introduction:

The 107th Congress of the United States of America through Public Law 107-350 enacted December 17, 2002 (the "Act"), mandated that certain public lands located in Clark County, Nevada, be conveyed to Clark County, Nevada, for use as a centralized shooting facility. In this Act, Congress found that –

- 1.) The Las Vegas area has experienced such rapid growth in the last few years that traditional locations for target shooting are now to close to populated areas for safely; and
- 2.) There is a need to designate a centralized location in the Las Vegas Valley where target shooters can practice safely; and
- 3.) A central facility is also needed for persons training in the use of firearms, such as local law enforcement and security personnel.

The purposes of the Act are –

- 1.) To provide a suitable location for the establishment of a centralized shooting facility in the Las Vegas Valley; and
- 2.) To provide the public with
 - A) Opportunities for education and recreation; and
 - B) A location for competitive events and marksmanship training.

On November 26, 2003, a patent was executed conveying "all the right, title and interest" in approximately 2,880 acres of public land to Clark County. The lands conveyed under this Act shall be used by Clark County for the purposes described in the Act.

The Act includes a reversionary clause that may be exercised at the option of the Unites States should Clark County cease to use any of the conveyed lands for the purposes described in the Act. The Act provides that Clark County, Nevada will be responsible for reclamation should the property ever revert to the United States.

The Act released a portion of the described public lands from the Quail Springs Wilderness Study Area, NV-050-411, to accommodate the conveyance for the purpose of a shooting park

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and also stated that administrative costs and survey costs necessary to the conveyance of the described public lands are to be paid for by Clark County, Nevada. Prior to the enactment of P.L. 107-350, Congress released the same portion of the Quail Springs Wilderness Study Area, under Public Law 107-282, Section 207 (a)(2)(B)(vii) passed November 6, 2002.

The Act grants no discretion to the Secretary whether to transfer the specified lands to Clark County for a centralized shooting facility. Rather, the Secretary is to ensure the lands are transferred as directed by Congress.

The purpose of this environmental assessment (EA) is to comply with the National Environmental Policy Act (NEPA). This EA does not and cannot assess whether the Secretary, through BLM, should convey different lands to the County, or whether the required conveyance, which occurred in November 26, 2003 should be rescinded. The conveyance was required by Congress. BLM cannot come to any determination contrary to the Congressional directive.

1.0 Location of Proposed Action

The legal description for the shooting park site is T. 18 S., R. 60 E, Section 25, S1/2; Section 26, S1/2; Section 27, S1/2; Section 34, All; Section 35, All and Section 36, All, containing approximately 2,880 acres. A map of the shooting park is attached as Exhibit 1.

1.1 Conformance with Applicable Land Use Plan

Disposal of the subject lands is consistent with the Las Vegas Resource Management Plan/Final Environmental Impact Statement (RMP), Lands Decision LD-1, approved in October 1998. This action was legislatively mandated under Public Law 107-350, enacted by Congress December 17, 2002. A copy of the law is attached at Appendix 1 of this document.

1.2 Need for Proposed Action

The purpose and need of the proposed action is to comply with Congressional direction under Public Law 107-350 to convey the above described lands to Clark County, Nevada for use as a shooting park.

1.3 Relationship to Statutes, Regulations and Agency Jurisdiction

The proposed action is specifically authorized by Public Law 170-350. This law directs the Secretary of the Interior, through BLM, to convey the subject lands to Clark County, Nevada, for development of a shooting park. Legislated sales are completed using regulations at 43 CFR Part 2700, which details the procedures for disposal of public land under The Federal Public Land Management Act of 1976 (FLPMA). The BLM is required to follow these regulatory procedures when conducting conveyances in conjunction with legislation, unless the legislation dictates a shorter time frame for completion of the conveyance that clearly does not meet schedules using the normal document process.

This action is also supported in a Clark County, Nevada document named <u>"Resolutions of Support for a Regional Public Shooting Park"</u>. This document is comprised of written. concurrences provided by state and local governmental entities giving their support for the need of a regional shooting park. This document is shown at Appendix 2.

1.4 Relationship to Community Development Plans

The 2,880 acres, more or less, as identified in P.L. 107-350, is located within or near those lands encompassed by the following land use plans:

- Clark County Master Plan Update 2007
- Las Vegas Valley Disposal Boundary EIS (December, 2004)
- Las Vegas Resource Management Plan and Final Environmental Impact Statement (October, 1998) (RMP)

2.0 Proposed Action - Legislative Conveyance of 2,880 Acres

The proposed action is to provide an environmental analysis of the impacts of Public Law 107-350.

2.1 No Action Alternative

Public Law 107-282, dated November 6, 2002, established the 2,880 acres as part of the additional 22,000 acres of public lands made available for disposal and future community development by Congress, prior to the passing of Public Law 107-350 which determined this land would be better suited for a shooting park. In accordance with this premise, the no action alternative will look at current management direction or level of management intensity prior to the shooting park legislation.

Under the no-action alternative the 2,880 acre parcel of public land would be available for community development consistent with the Southern Nevada Public Lands Management Act of 1998 (SNPLMA) requirements for disposal.

2.2 Alternative Considered but Eliminated from Detailed Study

No other alternatives were considered, as P.L. 107-350 specifically identified the subject parcel for conveyance.

3.0 Affected Environment

A. Summary

Supplemental Authority	Not Present	Present/ Not Affected	Present/May be Affected	Rationale
Air Quality			√	The Las Vegas Disposal Boundary EIS assessed indirect impacts of land disposal actions. The parcel identified for this sale/conveyance was included in the analysis and the effects will be identified in the EA. The County will comply with the Department of Air Quality and Environmental Management Regulations.
Area of Critical Environmental Concern (ACEC)	✓			Resource is not present.
Cultural/Historical	✓			No historic properties are present
Environmental Justice	√			No minority or low-income groups would be disproportionately affected by health or environmental effects.
Farmlands Prime or Unique	✓			Resource is not present
Noxious Weeds/Invasive Non-native Species	*			Resource is not an issue. The BLM-Las Vegas Field Office (LVFO) has prepared the LVFO Weed plan that provides guidance for an active integrated weed management program using best management practices (BMP). This plan also identifies priority areas for weed treatment and management. The LVFO Noxious Weed Plan was approved on December 18, 2006. As described in the 2006 LVFO Noxious Weed Plan, noxious weeds do not need to be considered for proposed projects on disposal lands in the Las Vegas Valley due to the existing level and future degree of urbanization.
Native American Religious Concerns	√			Tribal consultation was conducted for the Las Vegas Valley Disposal Area. No issues were identified for this portion of the Las Vegas Valley.
Floodplains		*		Areas right within the floodplain will have minimal to no development. A flood control plan was approved by the Clark County Regional Flood Control District City of North Las Vegas, City of Las Vegas and Clark County Development Services. There will be no increase to flood risk for the Upper Las Vegas Wash.
Riparian/Wetlands/	✓			Resource is not present.
Threatened and Endangered Species			✓	Impacts Assessed in EA.
Migratory Birds			✓	Impacts Assessed in EA.
Waste –Hazardous/Solid	✓		4	Waste will be managed in accordance with a waste management plan.

Supplemental Authority	Not Present	Present/ Not Affected	Present/May be Affected	Rationale
Water Quality		✓		Impacts to water quality could occur as a result of this project. Permits from the Nevada Department of Environmental Quality and Army Corp of Engineers will be required to comply with the Clean Water Act.
Wild & Scenic Rivers	✓			Resource is not present.
Wilderness	✓			WA is not an issue for this proposed project.
Forests and Rangelands (HFRA only)	√			Project does not meet HFRA criteria.
Human Health and Safety.	√			Human Health and Safety is not an issue for this proposed project.

The BLM completed an analysis of resources that provided 100% coverage for all 46,701 acres of public lands considered in the Disposal EIS. A full description of the affected environment that surrounds the area may be found at pages 3-1 through 3-73 of the Disposal EIS. This section of the EA highlights/augments information from that document that addresses the amount of habitat, plants or animals and any cultural resources that are potentially impacted by the presently proposed action.

B. Botany

In May, 2001 a botany survey of the proposed sale/conveyance area was completed. A review of the report indicates that no rare plants were present. Cactus and Yucca were found to range from low to moderate density throughout the sale/conveyance area..

C. Threatened and Endangered Species / Special Status Species

The sale/conveyance parcel is located within the Las Vegas Valley and located directly north of the disposal boundary (see map). Threatened and Endangered Species and Special Status Species found within the Las Vegas Valley are discussed in the Disposal EIS. Pages 3-30 through 3-32 of the Disposal EIS identify the only federally listed species known to occur on the proposed sale/conveyance parcel which is the threatened desert tortoise (Mojave population). Surveys conducted in support of the Disposal EIS adjacent to the identified parcel indicate very low density tortoise habitat (0-10 tortoises per square mile) in the area. The survey indicates that 2 live tortoises, 24 tortoise carcasses, and 189 tortoise burrows were observed within 1 mile of the sale/conveyance parcel. A Threatened & Endangered Species No Affect-May Affect Determination was written by BLM on October 29, 2003, prior to the land transfer. A copy is provided at Exhibit 5.

A desert tortoise survey conducted for the Clark County Department of Parks and Recreation in May 2001 found 4 desert tortoises and 40 desert tortoise burrows on the 5 randomly selected 40 acre sample plots on the sale/conveyance parcel.

Pages 3-30 through 3-32 of the Disposal EIS identify special status wildlife species including species that are: proposed or candidates for listing under the Endangered Species Act of 1973

(ESA); species identified by the BLM as sensitive; and those listed or proposed for listing by a state or county in a category implying potential endangerment or extinction. According to the definition of a BLM sensitive species (see definition page 9-5 of the Disposal EIS) discussed in the Disposal EIS (pp. 3-26, 3-30 to 3-32), the following sensitive species are known to potentially occur within the parcel: phainopepla, western burrowing owl, and banded Gila monster. Phainopepla occur within the cat-claw acacia and mesquite habitat. Western burrowing owl and banded Gila monster occur in washes and Mojave Desert scrub uplands in undeveloped parcels.

D. Migratory Bird Treaty Act

The parcel contains Mojave Desert scrub habitats that support numerous wildlife species including migratory birds. Species-specific surveys were not conducted for common wildlife on the parcel; however, a list of common wildlife known to occur in the Las Vegas Valley was compiled for the Disposal EIS. See Disposal EIS, B-7, Table B-3, Appendix B

E Wildlife

Some 300 wildlife species have been recorded in the Las Vegas Valley. These include over 240 species of birds, 27 species of mammals and approximately 25 species of reptiles. Pages 3-30 through 3-32 of the Disposal EIS discuss common wildlife species known to occur within the Las Vegas Valley. That list includes species that are expected to be found on the sale/conveyance parcel.

F. Soils

Soils within the project area consist of gravelly sandy loams derived from limestone and dolomite and located on fan remnants and skirts. See the Supplemental Programmatic Environmental Impact Statement (EIS) for the Clark County Regional Flood Control District (CCRFCD) 2002 Master Plan Update, 2004 EIS pages -51 through 62 for a complete review of soils within the project area.

G. Air Resources

See pages 3-1 through 3-9 of the Disposal EIS for a complete analysis of the air quality issues in the Las Vegas Valley non-attainment area. This section identifies the State Implementation Plans (SIPs) for Carbon Monoxide (CO). Particulate Matter of 10 Microns or Less (PM₁₀) and Ozone (O₃) as well as lists all criteria pollutants as set forth in National Ambient Air Quality Standards (NAAQS) and identified by the Environmental Protection Agency (EPA).

It is important to note that land sale/conveyance is exempt from General Conformity Regulations (Section 176© of the Clean Air Act (CAA) according to 40 CFR 93-153(C)(2)(xiv), which states the following exemption to the rule, "transfers of ownership, interests, and titles in land, facilities and real and personal properties, regardless of the form or method of the transfer." The BLM would, however follow all conformity regulations for any future designation of non-attainment for regulated pollutants.

Potential Health Effects for CO and PM₁₀ and O₃. See pages 3-2 to 3-6 of the Disposal EIS for a full description of health concerns of the pollutants CO, PM_{10} and O₃. Acute exposure to CO can cause decreased respiratory function; PM_{10} enters the lungs and can cause lung diseases and O₃ can cause long term decreases in lung function.

The EPA changed the standard for O₃ from 84 ppb to 75 ppb, in March of 2008. This new standard will require implementation of Volatile Organic Compound (VOC) reduction strategies. There are a number VOC reduction strategies, including but not limited to reformulated fuel, vapor recovery, double walled under-ground storage tanks, increase mass transit and car pooling. It is not known as this time which of these reduction strategies would be implemented by Clark County Department of Air Quality and Environmental Management (CCDAQEM) as part of the SIP to show attainment for the new O₃ standard. BLM will work closely with CCDAQEM to ensure BLM authorizations are included as part of the SIP for the affected area. CCDAQEM is not required to submit a completed SIP to the EPA for signature until sometime in 2012.

H. Water Resources

The Disposal EIS (p 4-61) presents an assessment of water needs out to the year 2018, based on 70,000 acres being developed over that timeframe. The expected water needs amount to an additional 175,000 acre/feet of water by the year 2018, based on a figure of 2.5 acre/feet/year of water needed for each acre of developed land. The same number was used to calculate water needs for this proposed action.

Water resources within the project area consists of both surface water and groundwater resources. Surface water flow through the project area originates from the Las Vegas Range collecting in tributaries and forms sheet flow towards to the Upper Las Vegas Wash. The Upper Las Vegas Wash collects flows from the Las Vegas Range, Sheep Range and Spring Mountains and conveys them to Lake Mead.

The project area is located in the Las Vegas Valley groundwater alluvial basin. Water levels within the basin are typically 200 or more feet below ground surface. Groundwater recharge occurs in the surrounding mountain ranges and most of the evapotranspiration from the system occurs on the valley floor.

See the Supplemental Programmatic Environmental Impact Statement for the Clark County Regional Flood Control District 2002 Master Plan Update, 2004 EIS pages 65 to 88 for a complete review of surface and groundwater resources within the project area.

I. Flood Plains

Page 3-18 in the Disposal EIS depicts the 100-year floodplain as identified by Federal Emergency Management Agency. Based on this map, a portion of the project area is located within or adjacent to the 100-year floodplain zone.

The CCRFCD is responsible local entity for developing a coordinated and comprehensive Master Plan to solve flooding problems, regulating land use in flood hazard areas, funding and coordinating the construction of flood control facilities and developing and contributing to the funding of a maintenance program for Master Plan flood control facilities. All new

developments requiring flood control must have flood control plans approved through the CCRFCD.

J. Cultural and Paleontological Resources

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. For the purposes of Section 106, historic properties are defined as those cultural resources that are listed in or eligible for nomination to the National Register of Historic Places (NRHP).

To comply with Section 106, the BLM Archaeologist conducted an existing data review that showed the area of potential effect (APE), a 2880 acre parcel, had never been evaluated for cultural resources. To prepare for a potential land transfer, Clark County contracted a Class III cultural resource inventory of the APE. The inventory was completed and results are detailed in BLM Cultural Resource Report 5-2452. One cultural resource property was documented. The site (26Ck6714), an historic road, was determined not eligible for nomination to the NRHP under any of the Secretary of the Interior's criteria of eligibility. The Nevada State Historic Preservation Office (SHPO) concurred with the BLM's determination in a letter dated June 3, 2003. The SHPO also concurred with BLM's determination that the undertaking as proposed would have no effect to historic properties.

Fossils resources must be considered and evaluated as "scientific values" under the Federal Land Policy and Management Act (FLPMA) of 1976. The Las Vegas Formation in the Upper Las Vegas Valley Wash contains the remains of extinct Pleistocene animals such as ground sloths, mammals, and camels. The San Bernardino County Museum (SBCM) conducted a pedestrian survey of those portions of the Las Vegas Formation within the parcel proposed for transfer. A total of 33 localities were recorded. Fossil remains are apparent on the surface and there is a high probability that fossils lie beneath. Clark County plans to avoid impacts to fossil resources by restricting construction activities to those areas lying outside the wash.

K. Hazardous Materials

An Environmental Site Assessment was prepared for Clark County Parks and Recreation by SWCA Environmental Consultants November, 2003. No recognized environmental conditions were found on the property. Once conveyed the property is likely to be used for shooting activities using lead ammunition. Any discharge of lead in this area will be managed under the approved lead mitigation plan. The Nevada Department of Environmental Protection (NDEP) approved Clark County's plan by letter dated December 12, 2006. See Exhibit 2 for the State's approval letter and Clark County's mitigation proposal, as prepared by Poggemeyer Design Group.

L Environmental Justice

Executive Order 12898 of February 11, 1994 states that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States. The subject lands are located in the very northern edge of the Las Vegas Valley, abutting the Desert National Wildlife Refuge on its northern and eastern boundaries, with public lands

located on the western and southern boundaries.

There are private lands lying adjacent to the property, with the majority of others approximately ½ - 1 mile south of the sale/conveyance parcel were evaluated for the presence of potential issues relevant to Environmental Justice. A field trip was conducted on the parcel to evaluate the potential for Environmental Justice issues based on the demographic information collected. The field tour revealed that the private and public parcels adjacent to the subject land are either undeveloped, public facility or residential forms of development. Those properties developed were observed to be either recently developed properties or are properties under construction.

M. Land Uses

The 2,880 acres, more or less, of public land identified under legislation P.L. 107-350 were undeveloped public land. The area was being managed in accordance with the Las Vegas Resource Management Plan and Final Environmental Impact Statement, approved October, 1998 (RMP). Access to the property prior to the legislation was along unauthorized OHV roads and right-of-way alignments. Pending land use applications on file with the Bureau were as follows:

- 1.) N-52308 a right-of-way application filed by the City of North Las Vegas for a detention basin and dike;
- 2.) N-76602, N-76603 and N-76604 rights-of-way applications filed by the City of North Las Vegas for three individual potable water reservoirs;
- 3.) N-37233 a right-of-way application filed by the City of Las Vegas for a water retention basin.

These applications were withdrawn by the responsible entity in order to allow the patenting of the lands to Clark County for the purposes of the Shooting Park Facility.

The remaining valid and existing rights were identified as a right-of-way N-75025-01, a temporary use permit issued to Nevada Power Company for the construction of a 500 KV transmission line.

Prior to the legislation, uses of the site were off road vehicle use, dumping and recreational shooting. Dumping consisted of a large number of tires, spent brass, empty ammo boxes, shooting targets, glass bottles, spray paint cans and plastic buckets. There are two dirt roads on the site and one on its eastern boundary that provide unregulated access to the Desert National Wildlife Refuge (DNWR); these will be closed during the development of the site at request of the U.S. Fish and Wildlife Service. Two other dirt roads run east and west across the property. The road centrally located will be closed and the other dirt road (Moccasin Road) serves as the southern boundary of the site and provides access for the large power lines that also form part of the southern boundary.

The Clark County centralized Shooting Park Facility has been designed to provide buffers on all four boundaries. All shooting ranges are pointed north, away from populations, and all rifle and pistol ranges are designed to capture all of the discharged projectiles. A one mile buffer zone from shooting areas has been provided on the southern edge of the property which is located nearest to private residential areas. There is a large buffer zone along the west boundary and a

quarter mile buffer zone along the northern boundary. The conceptual master plan displays all the projectile fall zones. Projectile fall zones are laid out as 300 yards and are all located and contained on the Shooting Park property. The average projectile distance for target shot shell loads is approximately 175 yards. All projectiles and those containing lead will be contained in internal drains and through a double settling basin to prevent materials from escaping the site. The rifle and pistol ranges are recessed into the property and protected by berms and backstops meeting the criteria established by shooting range design safety standards. In addition, the northern drainage channel which prevents the offsite flows from the Sheep Mountain range from mixing with any onsite flows that may occur on the ranges, is located south of the northern property line by 56 feet to protect and mitigate any potential impacts to DNWR property.

The area surrounding and abutting the Shooting Park Facility is undeveloped. The closest private land, approximately 80 acres, more or less, lies on the southern boundary and is legally described as T. 19 S., R. 60 E., section 3, Government Lots 1 and 2. These lands were conveyed under State Selection 11, from the United States to the State of Nevada in June 16, 1880. Lands abutting the southern boundary are also leased under the Recreation and Public Purposes Act of June 14, 1926 (R&PP) to the City of Las Vegas for use as Floyd Lamb State Park under lease number N-36876-01. Another R&PP lease, N-62830, also issued to the City of Las Vegas, is proposed to be developed according to the original plan of development filed by the State of Nevada for Floyd Lamb State Park. The two R&PP leases encumber a total of 1,361.33 acres of public land. The majority of the lands are currently undeveloped.

Lands lying to the south of the Shooting Park Facility are also encumbered by the following rights-of-way (ROW):

- a. N-53584 ROW issued to City of North Las Vegas for the Upper Las Vegas Wash storm water detention basin and diversion dikes.
- b. N-76357 ROW issued to City of North Las Vegas for roadway, water, sewer and drainage improvement on the west side of Decatur Boulevard.
- c. N-77820 ROW issued to the City of North Las Vegas for a waterline and reservoir on the east side of Decatur.

Portions of these 2,880 acres were included in the Quail Springs Wilderness Study Area.as identified in the RMP. The boundary is a combination of roads, a shared boundary with Floyd Lamb State Park, the DNWR, the corporate boundary for the City of Las Vegas, a common border with the Moapa Indian Reservation, and an abandoned railroad grade. As identified in the RMP, this study area originally contained approximately 12,145 acres of public land.

N. Transportation

Current access to and within the subject area is provided by a Bureau Letter of Agreement, dated April 26, 2007, and BLM rights-of-way issued to the City of North Las Vegas. Along with the development of the shooting facility, access and road alignments will need to be determined. The responsibility for those alignments belongs to the jurisdictional entity. If public lands, other than those identified in this sale/conveyance are used for these proposed road alignments, the jurisdictional entity will need to file the appropriate land use application with the Bureau and request authorization of the use. As a result of the construction and operation of the Shooting Park Facility, it is anticipated that there will be access and transportation issues.

The City of Las Vegas filed a right-of-way application October 29, 2003, for a road alignment for the Outer Beltway. The right-of-way requested a total of 2,451.25 acres of land and varies in width from 0' to 1,320' wide. as proposed. This application proposed to cross the southerly boundary of sections 34, 35 and 36 of the Shooting Park Facility. The general alignment for the Outer Beltway is proposed to follow from I-15 west along the Iron Mountain Road alignment to Decatur Boulevard; then along the alignment for Moccasin Road to Fort Apache; then southwesterly to the Tropical Parkway alignment. The Bureau issued a partial rejection of the application on November 20, 2003. The partial rejection covered only the lands identified in sections 34, 35 and 36 of the Shooting Park Facility. No appeal was filed. Since the land transfer in November 2003, Clark County has been coordinating with the City of Las Vegas regarding the Sheep Mountain parkway (Outer Beltway) alignment. A 200 foot wide buffer from the southerly boundary of section 34, 35 and 36 has been identified for the future Sheep Mountain Parkway and Nevada Energy Transmission corridor purposes.

O. Noise

The site is rural in nature. Current noise on the site is generated from unregulated recreational shooting and off-road vehicle traffic, and aircraft from Nellis Air Force Base.

4.0 Environmental Impacts of the Proposed Action

A. Description of Impacts for the Proposed Action

The act of transferring title of property causes no direct impacts to the environment. All impacts to the environment from such title transfers are considered indirect as the local governments would issue permits for construction projects, in the future. However, BLM is required to assess the indirect impacts of reasonably foreseeable future development. Such an assessment has been done in the Disposal EIS for all remaining BLM administered lands consisting of 46,701 acres within the Las Vegas Valley Disposal Area, including the cumulative impacts of development of 70,000 acres of private land out to the year 2018.

B. Botany

The introduction of exotic species may occur from disturbance activities within the subject lands during development. However, BLM's sale/conveyance of land, in itself, would not lead to the spread of invasive species and noxious weeds.

Since the land will be permanently conveyed to the proponent, and we are not aware of any local requirements for cacti and yucca evaluation and salvage, it is anticipated that it will not be required. However, Clark County has stated they will direct the construction contract to perform cacti and yucca salvage and incorporate native revegetation as part of the landscape plan for the Shooting Park Facility.

No rare plants were present, therefore no impacts are expected.

C. Threatened and Endangered Species / Special Status Species

Consultation with the U.S. Fish and Wildlife Service for the Las Vegas Valley Disposal Boundary EIS (1-5-96-F-023R.3) indicates that activities occurring within the sale/conveyance parcel may affect the desert tortoise or its habitat. The disposal of BLM lands and the transfer of title would not have a direct impact on threatened, endangered or special status species. Subsequent development and change in land use would result in indirect impacts through loss of thermal cover, vegetation and forage, mortality and harassment of individual animals, decreased local genetic flow, and decrease in habitat value of adjacent remaining "wildland" areas due to increased human activity in the area. Direct incidental take of desert tortoises and their habitat would be covered under the Clark County Multiple Species Habitat Conservation Plan (CCMSHCP) Section 10(a)(1)(a) permit. Under the MSHCP, desert tortoise clearance surveys are voluntary on private land and rarely conducted. The activities following the disposal of the proposed parcel are anticipated to result in the eventual loss of 2,880 acres of desert tortoise habitat and an estimated 45 desert tortoises. Due to increased human activities in the area an additional 5 square miles of habitat surrounding the parcel could be degraded in habitat value and may eventually no longer support desert tortoise populations.

An unknown number of banded Gila monsters, phainopepla, and western burrowing owls would be impacted by activities occurring after the disposal of the parcel. Very little is known about the actual distribution of Gila monsters and western burrowing owls in southern Nevada.

Effects to Gila monsters occupying the sale/conveyance parcel would be similar to those of the desert tortoise. No direct impacts would occur. Subsequent development and change in land use would result in indirect impacts through loss of thermal cover and forage, mortality and harassment of individual animals, decreased local genetic flow, and decrease in habitat value of adjacent remaining "wildland" areas due to increased human activity in the area. Due to their reclusive nature, an unknown number of Gila monsters would be killed by development of the parcel.

No direct impacts to burrowing owls and phainopepla would occur. Subsequent development and change in land use would result in indirect impacts through loss of nesting habitat and forage, mortality and harassment of individual animals, and decrease in habitat value of adjacent remaining "wildland" areas due to increased human activity in the area. Land containing catclaw acacia habitat occupied by phainopepla would be lost once the native vegetation is cleared, reducing the winter and nesting habitat for the species in Clark County. The relative importance of this habitat to the phainopepla is unknown at this time. However, there are adequate acres of un-fragmented habitat outside the Las Vegas Valley for the phainopepla. These species are both protected by the Migratory Bird Treaty Act.

Title II of the Clark County Act released the Quail Springs Wilderness Study Area (WSA) and the Nellis A, B, and C WSAs from further consideration as wilderness and included 11,251 acres of these former WSA lands in the disposal boundary area (including the sale/conveyance parcel). These lands were identified in the Clark County MSHCP as Intensively Managed Areas. The plan identified these lands where management actions provided the most stringent habitat protection. In order to remain in conformance with the MSHCP, the BLM participated in an expedited review with Clark County, USFWS and other federal agencies to determine the appropriate mitigation for loss of these 11,251 acres of habitat. The review, completed in May

2008, determined that the loss of 65,459 acres Mojave Desert Scrub habitat within Intensively Managed Areas and Less Intensively Managed Areas throughout Clark County as a result of legislative mandates and private land development represents a small decrease (-1.9%) in habitat. This is not considered an adverse change and has been mitigated by the Clark County MSHCP.

D. Wildlife

The disposal of BLM lands and the transfer of title would not have a direct impact on common wildlife species. Subsequent development and change in land use would result in indirect impacts. Development construction activities would cause loss of vegetation and wildlife habitat, mortality of wildlife through crushing and burying during construction, habitat fragmentation, and an increase in the potential for illegal kill and harassment of wildlife.

The magnitude of impacts to wildlife resources would depend on a number of factors including the type and duration of disturbance, the species of wildlife present, and time of year.

Construction activities could effectively remove existing habitat, thereby reducing its availability to local wildlife populations. Permanent and temporary loss of habitat as a result of construction activities could affect some small mammal, reptile and/or amphibian species with very limited home ranges and mobility. However, most of these species would be common and widely distributed throughout the area and the loss of some individuals as a result of habitat removal would have a negligible impact on populations of the species throughout the region. In addition to these indirect effects, some less mobile species (e.g., reptiles, amphibians and a number of smaller mammals) may be sensitive to the potential fragmentation of habitat associated with the installation of linear facilities, such as roads, that may act as a barrier to the movement of these animals. Dry washes are known to be an important habitat for many species of wildlife.

Indirect effects due to displacement of wildlife would also occur as a result of construction activities associated with the proposed project. In response to the increase in human activity (equipment operation, vehicular traffic and noise) wildlife may avoid or move away from the sources of disturbance to other habitats. This avoidance or displacement could result in under utilization of the physically unaltered habitats adjoining the disturbances. The net result would be that the value of the habitats near the disturbances would be decreased and previous distributional patterns would be altered. The habitats would not support the same level of use by wildlife as before the onset of the disturbance. Additionally, some wildlife would be displaced to other habitats leading to some degree of overuse and degradation of those habitats.

Public vehicle use of roads built to access facilities and use of the facilities themselves can have a similar, additive or possibly a synergistic influence on reducing wildlife use of adjacent habitats, as well as causing additional impacts. Public access to facilities in the Project Area increases the potential for mortality and general harassment of wildlife.

E. Migratory Bird Treaty Act

Under the Migratory Bird Treaty Act of 1918 and subsequent amendments (16 U.S.C. 703-711), it is unlawful to take, kill, or possess migratory birds. A list of those protected birds can be found in 50 C.F.R. 10.13.

The disposal of BLM lands and the transfer of title would not have a direct impact on migratory birds. Subsequent development and change in land use would be indirect impacts, including loss of nesting and foraging sites; loss of nest and young during clearing and ground disturbing activities; avoidance or displacement as birds avoid construction and developed areas. The net result would be the value of the habitats near the disturbed areas would be decreased or diminished

F Air Quality

Page 4-9 of the Disposal EIS clearly states that the Proposed Action there, disposal of 46,701 acres, would not result in an exceedance of the PM_{10} standard. Levels of CO would continue to be in compliance with SIP requirements. Further, the Proposed Action would be in compliance with the 8-hour ozone standard in 2009 and 2018 the out years modeled, as exhibited on page 4-12 of the Disposal EIS. This sale/conveyance falls within the analysis already completed for the Disposal EIS and Argonne National Laboratory modeling results indicate attainment would be reached and maintained for PM_{10} , CO and Ozone out to the year 2018.

Simulations using the Argonne National Laboratory air-quality model indicated potential for future O₃ concentrations from development of disposed lands to temporarily exceed the 75ppb standard for select areas of Las Vegas Valley. The temporary exceedances were considered a "worst-case" scenario because the model was constructed using very conservative approaches and only included reformulated fuels as a VOC reduction strategy. The Argonne National Laboratory air-quality model also assumed a disposal rate of approximately 4,000 acres per year based upon the rate of sales at the time and the assumption that the market could support this rate of disposal into the foreseeable future. In the past 2-3 years, deteriorating economic conditions have reduced demand for additional housing and land; the number of acres actually disposed has dropped considerably in the Las Vegas Valley from a high of 11,000 acres in 2005 to a low of 35 acres as of June 11, 2008. The current trend in lands sales is expected to continue for the next several years based on the present economic conditions.

The results projected in the O₃ model still adequately address future expected levels of O₃ in the Las Vegas Valley. Future O₃ concentrations resulting from development of disposed lands probably will be less than predicted by the model because of the greatly reduced rate of land disposal, conservative modeling approaches and likely implementation of VOC reduction measures not considered in modeling scenarios. The new 75 ppb O₃ standard probably will not be exceeded based upon this rational, but there is some uncertainty involved with modeling results. In order to address uncertainty, the following measures will be implemented. BLM will coordinate CCDAQEM to ensure Federal actions are consistent with the future guidelines provided by CCDAQEM. BLM, in coordination with CCDAQEM, also will determine if additional modeling is needed in the future if disposal rates increase to initially assumed values and specific VOC reduction measures are identified and implemented under a revised SIP.

G. Soils

During the construction phase of development on the subject lands, the exposed soil surfaces are likely to be affected by wind erosion and soil losses or movement. Soil erosion occurs during construction when the protective vegetation and organic materials are removed. Excavation and fill stockpiles or grading can also create steep, erodible slopes. However, after a surface is

prepared, applying water or other erosion control applications to the prepared surface can reduce erosion from wind. Access roads can also be a potential source of erosion unless the preliminary design calls for paved roads and holding areas. Erosion control measures are recommended within the subject lands during construction until the remaining unpaved disturbed areas are stabilized. The County requires construction contracts to comply with DAQEM Air Pollution Control Regulations Section 94, Construction Activities Dust Control Handbook and obtain a dust control permit prior to construction commencement. Therefore, dust emissions are a short-term concern. In addition, completed developments will stabilize surfaces throughout the subject lands.

H. Water Resources

Development of this sale/conveyance would eventually lead to a need for approximately 2,250-acre feet of water.

Page 4-19 of the Disposal EIS outlines the process needed to ensure analysis of the impacts of the proposed action altering the surface flows of waters of the US. Any action that would impact a water of the US requires a section 404 permit. Before a section 404 permit may be issued, the action must be in compliance with section 401 of the Clean Water Act, section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. The Army Corp of Engineers has jurisdiction over this permitting process. Environmental impacts cannot be determined until a site-specific project is proposed, at which point the Corps prepares a NEPA document reflecting complete analysis of the site-specific impacts. In July 2007, the Army Corp determined that 2.7 acres of jurisdictional waters would be impacted by this project. Additional permit requirements for compliance with Section 401 of the Clean Water Act permitted by the Nevada Department of Environmental Quality would be required for this project.

All culinary water and waste water will be part of local water and sewer systems. There will be no impacts to groundwater resources within this project area.

I. Floodplains

The project area is located along the Upper Las Vegas wash on an alluvial fan discharging from the Las Vegas Range. With the proposed action, flows from the fan will be collected into channels and routed around the area. The flows will then be discharged into the Upper Las Vegas Wash. Just downstream of the discharge point in the ULVW is a Clark County Regional Flood Control detention basin. All flows discharged into the ULVW from the project area would be collected behind the existing detention basin and flow would be regulated into the wash.

In Clark County, developers must submit plans for addressing drainage from the proposed project, as well as drainage into the property. These plans are reviewed by the County on a case-by-case basis to check that any increase to the runoff, expansion of flood boundaries, increase in depth or velocities of runoff, are, or will be mitigated during the development of the property (Weber, 2003). Clark County requires all construction contracts to comply with the provisions of Nevada Revised Statutes, Chapter 445A: Water Pollution Control; and adherence to all Federal regulations under 40 CFR 122.26(b)(14). Clark County requires their construction contracts to submit a Storm Water Pollution Prevention Plan (SWPPP) prior to submitting a

Notice of Intent to the Nevada Division of Environmental Protection prior to construction commencement.

J. Hazardous Material Assessment/Inspection

The parcel of public land recommended for transfer out of Federal ownership via sale/conveyance was inspected and existing records were examined in accordance with Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (42 USC 9620(h)) (CERCLA). An Environmental Site Assessment (ESA) was completed on November, 2003.

Lead collected from the Shooting Park Facility will be managed under the management practices detailed in Poggemeyer Design Group letter to NDEP dated November 16, 2006. NDEP provided written approval for Poggemeyer's proposal concerning the Clark County Shooting Park Facility and the Lead Mitigation Management Practices by letter dated December 12, 2006. Both letters are shown at Exhibit 2.

In May, 2008, Clark County completed an Environmental Stewardship Plan for the environmental management of the Shooting Park Facility. On July 25, 2008, Clark County received a Best Management Practices certificate from the EPA. A copy is located at Exhibit 6.

K. Cultural and Paleontological Resources

No historic properties are located on the sale/conveyance parcel. The transfer as proposed will have no effect to historic properties.

Fossil remains are apparent on the surface of the sale/conveyance parcel. There is a high probability that fossils lie beneath. Clark County plans to avoid impacts to fossil resources by restricting construction activities to those areas lying outside the wash.

L. Environmental Justice

There are no EJ populations identified in the vicinity of the subject parcel and therefore no disproportionately high or adverse human health or environmental effects were identified for minority or low-income populations.

M. Lands

The pending land use applications for North Las Vegas, Nevada (4) and City of Las Vegas, Nevada (1) were withdrawn in writing by the respective jurisdictional entity. The voluntary withdrawal letters are included in the Bureau's case file N-76647 established for this transaction. The remaining temporary use permit, N-75025-01 will be identified in the patent as a valid and existing right of record.

Clark County, Nevada can continue to access the Shooting Park Facility, provide water and power to the site under the Bureau's Letter of Agreement, dated April 26, 2007. Once the CTA EIS is complete, the City of North Las Vegas will maintain the improvements installed by Clark County until they request the Bureau assign those rights to the City of Las Vegas, the appropriate

jurisdiction which resides on the west side of Decatur Boulevard.

With the subject lands released from Wilderness study by P.L. 107-282 and PL. 107-350, the Bureau can convey the identified public lands for a Shooting Park Facility. The Bureau's patent includes a reversionary clause that states if the property ceases to be used for a shooting facility, the lands shall revert to the United States, at the option of the United States. Valid and existing rights held under temporary use permit N-75205-01 will also be included in the patent.

With issuance of the patent and development of the site by Clark County, the area will cease to be used for dumping, OHV use, and random recreational target shooting. Development will also confine the deposits of lead and other debris into manageable recyclable areas, allow for safety supervision, and reduce the use of recreational shooting on adjacent public lands.

N. Transportation

Clark County completed a traffic study entitled, <u>A Traffic Study for Clark County Shooting Park</u>, <u>November</u>, <u>2006</u> for this area. The report identifies a single access point for the Shooting Park Facility at the intersection of future Moccasin Road and Decatur Boulevard. The report describes access to the Shooting Park Facility, on-site parking and circulation of traffic, off-site signage and special events. A separate <u>Special Event Traffic Management Plan for the Clark</u> <u>County Shooting Park</u>, <u>dated July 2</u>, <u>2007</u>, was also prepared for the Shooting Park Facility.

The Bureau has no jurisdictional responsibilities for reviewing and approving the two aforementioned traffic studies. Those actions along with implementing them are solely the responsibility of the jurisdictional entity.

The City of North Las Vegas obtained right-of-way grants for the extension of Decatur Boulevard, prior to the Conservation Transfer Area (CTA) environmental studies. The existing grants are sufficient to provide transportation access to the Shooting Park Facility. Clark County can continue to access the site, provide water and power to the site, under the Bureau's Letter of Agreement. See Exhibit 3 for a copy of the letter.

O. Noise

Clark County's noise assessment report includes (a) live noise field measurements using ANSI certified Type 1 Precision sound level meters of individual discharges of various firearms; (b) simultaneous ambient noise measurements at two locations along the nearest residential area; (c) firearms noise 3 Dimensional modeling using the U.S. Army Small Arms Range noise Assessment Model (SARNAM), that incorporates the physical topography of the site on noise impacts and (d) noise impact analysis.

The Executive Summary of Noise *Assessment Report for Clark County Shooting Park, dated February 16, 2009* report concludes, "Based on the measured ambient noise levels of between 44 and 50 dBA at property lines of the closest residences and the projected noise levels associated with individual firings of various firearms, it can be reasonably concluded that most individual discharges of firearms would be much below ambient noise levels and likely would not be discernable. In any case, all firearms would be much below the Clark County's 56 dBA noise limit.

The predicted noise levels for individual shots for all anticipated firearms modeled as well as the various scenarios of simultaneous shootings at the three shooting ranges indicate that the Clark county noise limit of 56 dBA for impulse noise will not be exceeded. Consequently, no noise impact on the community is expected."

DDR, Inc. prepared another report on the noise impacts of the Shooting Park Facility which comes to different conclusions than the County's noise assessment report. This report is entitled, *Review of the Results and Conclusions Presented in the Report titled: Noise Assessment Report for Clark County Shooting Park*, dated March 23, 2009. The conclusions in this report were questioned in a recent court proceeding to enjoin the construction of the Shooting Park Facility (ultimately the court did not enjoin construction of the Park). At issues is whether the DDR, Inc. report correctly measured noise levels from the property boundary line, instead of directly at the firearm discharge location. Therefore, it appears that the conclusions in the DDR, Inc. report may be unreliable for the purpose of determining significant environmental impacts.

In any event, Clark County, Nevada, has the jurisdictional responsibility for ensuring compliance with the appropriate laws and ordinances regarding noise.

4.1 No Action Alternative Impacts

Public Law 107-282, dated November 6, 2002, established the 2,880 acres as part of the additional 22,000 acres available for disposal and future community development, prior to Public Law 107-350 passing which determined this land would be better suited for a shooting park. With this premise, the no action alternative will look at current management direction or level of management intensity prior to the shooting park legislation.

Under the no-action alternative the 2,880 acre parcel of land would be available for community development consistent with the Southern Nevada Public Lands Management Act requirements for disposal.

4.1.1 Description of Impacts for No-Action

The act of transferring title of property causes no direct impacts to the environment. All impacts to the environment from such disposals are considered indirect as the local governments would issue permits for construction projects, in the future. However, BLM is required to assess the indirect impacts of reasonably foreseeable future development.

A. Botany

The introduction of exotic species may occur from disturbance activities within the subject lands during development. However, a BLM disposal action, in itself, would not lead to the spread of invasive species and noxious weeds.

Since the land will be permanently conveyed to the proponent, and we are not aware of any local requirements for cacti and yucca evaluation and salvage, it is anticipated that it will not be required.

In 2001, a rare plant survey was completed for the on the 2,880 acres. No rare plants were found within the project area.

B. Threatened and Endangered Species / Special Status Species

The disposal of BLM lands and the transfer of title would not have a direct impact on threatened, endangered or special status species. Subsequent development and change in land use would be indirect impacts. Those activities following the disposal of the 2,880 acres are anticipated to result in the eventual loss of 2,093 acres of desert tortoise, banded Gila monster and western burrowing owl habitat.

An unknown number of banded Gila monsters and western burrowing owls would be impacted by activities occurring after the disposal of the parcel. Very little is known about the actual distribution of both these species. The MSHCP does not establish requirements concerning the Gila monster, as it is an evaluation species. As for burrowing owls, when title is transferred and the land is developed under the MSHCP, no inventory is required by the private land owner. Burrowing owls can be taken as part of an overall permit to develop. The BLM has agreed to maintain habitat outside the Las Vegas Valley for these species so that development can continue in the Las Vegas Valley. Land containing cat-claw acacia habitat occupied by phainopepla would be lost once the native vegetation is cleared, reducing the winter and nesting habitat for the species in Clark County. The relative importance of this habitat to the phainopepla is unknown at this time. However, there are adequate acres of good un-fragmented habitat outside the Las Vegas Valley for the phainopepla.

C. Wildlife

The disposal of BLM lands and the transfer of title would not have a direct impact on common wildlife species. Subsequent development and change in land use would be indirect impacts. Development construction activities would cause loss of vegetation and wildlife habitat and mortality of plants and animals through crushing and burying during construction, digging and earth moving.

Disposal of the remaining land available for disposal in the Las Vegas Valley would not jeopardize the existence of the threatened desert tortoise. Most other species are common and widely distributed throughout the area and the loss of some individuals and their habitat would not affect the species' populations throughout their range.

D. Migratory Bird Treaty Act

Under the Migratory Bird Treaty Act of 1918 and subsequent amendments (16 U.S.C. 703-711), it is unlawful to take, kill, or possess migratory birds. A list of those protected birds can be found in 50 C.F.R. 10.13. Due to the existing fragmentation it is unlikely the area analyzed would interfere with the movement of migratory wildlife species. Therefore, the disposal of this land analyzed in the EA is unlikely to interfere with the movement of migratory wildlife species

E. Air Quality

In accordance with the CAA amendment requirements, this conformity analysis focused on non-attainment criteria pollutants CO and PM_{10} . An action is considered regionally significant if the emissions associated with the project are 10 percent or more of the region's emissions for that particular pollutant. The regionally significant thresholds are 12,100 tons/year for CO and 17,800 tons/year for PM_{10} based on the total budgets identified in each respective SIP. The following section summarizes the quantification of emissions using the June 2003 Land Sales Air Quality Analysis Model derived by BLM Senior Air Quality Specialist Scott Archer (EA Number: NV-050-2003-89). The analysis included emission calculations for all six criteria pollutants (CO, PM_{10} , NO_x , SO_2 , VOC_s , and $PM_{2.5}$).

Emission Factors

The emission factors used for this emission analysis were generated by BLM Senior Air Quality Specialist, Scott Archer. The emission factors take into account vehicle miles traveled, vehicle exhaust, vehicle road dust, natural gas use (hot water and furnace), electricity use (Reid Gardner Power Plant), and developed property fugitive dust. Construction emission estimates are not included as part of this analysis because there are no widely accepted standard emission factors, the impacts are temporary, not cumulative and not additive. The emission estimates projected in the analyses are additive once the land is developed. The calculated emission factors for each criteria pollutant/land use are provided in the units of measurement of tons/year.

Air Pollutant Inventory Emissions Factors

Criteria	Single Family Home	Office Building	Convenience	Apartment	Moderate Casino	City Park
Pollutant			Store	Complex		
CO	0.37 T/ac	0.29 T/ac	5.40 T/ac	1.37 T/ac	1.06 T/ac	0.01 T/ac
CO2	642 T/ac	318 T/ac	1,593 T/ac	2,142 T/ac	924 T/ac	7.37 T/ac
NOx	1.14 T/ac	0.86 T/ac	8.77 T/ac	4.35 T/ac	2.55 T/ac	0.02 T/ac
SO2	0.08 T/ac	0.07 T/ac	0.17 T/ac	0.32 T/ac	0.15 T/ac	<0.01 T/ac
VOC	0.23 T/ac	0.25 T/ac	6.82 T/ac	0.94 T/ac	1.05 T/ac	0.01 T/ac
PM10	0.44 T/ac	0.45 T/ac	8.72 T/ac	1.62 T/ac	1.50 T/ac	0.08 T/ac
PM2.5	0.16 T/ac	0.14 T/ac	1.85 T/ac	0.54 T/ac	0.41 T/ac	0.03 T/ac

Assumptions

Several assumptions were made to assist in the air emission analysis. These assumptions include the designation of projected future land uses and the anticipated duration for development of these lands.

Land Use. The evaluation of emissions for this disposal assumed current lands are converted to the following land uses: single family homes; apartment complexes; office buildings; convenience stores; moderate size casino/hotels; and city parks. Based on data provided by the Clark County Comprehensive Planning Department, the percentage of the total land sale acreage assigned for each land use is shown below. The total acreage associated with each land use is based on this assigned percentage.

Development of 2,880 acres for community development would increase criteria pollutant levels

as follows based on a community development scenario of, 65% single family home 1,872 acres, 13% office buildings 374 acres, 2% convenience stores 58 acres, 15% Apartment Complex 432 acres, 2% moderate casino 86 acres and 2% city park 58 acres: The numbers estimate the increased without any mitigation that Clark County may enforce, CO 1,797.88 tons, NOx 5,064.04 tons, SO2 337.52 tons, VOC 1,416.58, PM10 2,331.22 tons and PM2.5 729.46 tons. It is estimated that it would take 7-10 years to develop the 2,880 acres, therefore these reflect the total emissions not the per year emissions.

F. Soils

During the construction phase of development on the subject lands, the exposed soil surfaces are likely to be affected by wind erosion and soil losses or movement. Soil erosion occurs during construction when the protective vegetation and organic materials are removed. Excavation and fill stockpiles or grading can also create steep, erodible slopes. However, after a surface is prepared, applying water or other erosion control applications to the prepared surface can reduce erosion from wind. Access roads can also be a potential source of erosion unless the preliminary design calls for paved roads and holding areas. Erosion control measures are recommended within the subject lands during construction until the remaining unpaved disturbed areas are stabilized. Therefore, dust emissions are a short-term concern. In addition, completed developments will stabilize surfaces throughout the subject lands.

G. Water Resources

Development of 2,880 acres would increase water usage by approximately by 7,200 acres feet based on an acre per foot factor of 2.5 ac/ft per acre developed.

Any action that would impact a water of the US requires a section 404 permit. Before a section 404 permit may be issued, the action must be in compliance with section 401 of the Clean Water Act (CWA), section 7 of the Endangered Species Act, and Section 106 of the National Historic Preservation Act. The Army Corp of Engineers has jurisdiction over this permitting process. Environmental impacts cannot be determined until a site-specific project is proposed, at which point the Corps prepares a NEPA document reflecting complete analysis of the site-specific impacts. BLM has no site-specific proposal for development of the land to analyze.

H. Floodplains

In Clark County, developers must submit plans for addressing drainage from the proposed project as well as drainage into the property. These plans are reviewed by the County on a case-by-case basis to check that any increase to the runoff, expansion of flood boundaries, increase in depth or velocities of runoff, are, or will be mitigated during the development of the property (Weber, 2003).

I. Hazardous Material Assessment/Inspection

The 2,880 acres of public land recommended for transfer out of Federal ownership via title transfer were inspected physically, and existing records will be examined in accordance with Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (42 USC 9620(h)) (CERCAL). Environmental Site Assessment (ESA) was completed in November 2003 and no hazardous materials were located.

J. Cultural and Paleontological Resources

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties. For the purposes of Section 106, historic properties are defined as those cultural resources that are listed in or eligible for nomination to the National Register of Historic Places (NRHP). See Appendix 3 for comment regarding cultural resources.

To prepare for a potential land transfer, Clark County contracted a Class III cultural resource inventory of the area of potential effect (APE). The inventory was completed and results are detailed in BLM Cultural Resource Report 5-2452. No historic properties were recorded. The Nevada State Historic Preservation Office (SHPO) concurred with the BLM's determination in a letter dated June 3, 2003. The SHPO also concurred with BLM's determination that the undertaking as proposed would have no effect to historic properties.

San Bernardino County Museum (SBCM) conducted a pedestrian survey of the Upper Las Vegas Wash and the Las Vegas Formation within the parcel to be transferred and recorded 33 localities where fossil remains are apparent on the surface of the formation. If this parcel were to leave federal ownership and be commercially developed, these sites would have no protection.

K. Environmental Justice

Executive Order 12898 of February 11, 1994 states that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Marian Islands." The subject lands are distributed throughout the northwest, west and southern areas of the Las Vegas Valley. The profile of Clark County's population by race is as follows (US Census Bureau), White 71.6%, Black/African American 9.1%, Asian 5.2%, Native American/Alaska Native 0.8%, Native Hawaiian & Other Pacific Islanders 0.5%, Other 8.6% and Two or More Races 4.2%. Of the total collective Clark County population for all races, 22% of the population lists their heritage as either Hispanic or Latino (ibid).

L. Noxious Weeds

A long range weed plan approved by the BLM needs to be in place contingent to the transfer of these lands. Weed management must control and contain weed populations, to protect the adjacent public lands from infestation. Land disturbance is a primary activity that invites weed establishment, and the weed management plan should address control measures throughout the ground breaking and construction phase to minimize the potential effects, as well as provide an ongoing assessment and treatment protocol. The Desert National Wildlife Refuge to the north and the conservation areas to the south are both sensitive areas of concern for ecological integrity.

M. Noise

Noise generated by the development of this property will be managed like any other master plan developed community in Las Vegas, Nevada. Federal, State, and Local laws, regulations and ordinances will be applied and enforced by the jurisdictional entity.

N. Transportation

Transportation patterns and traffic management will be determined by the jurisdictional entity. Federal, State, and Local laws, regulations and ordinances will be applied and enforced by the jurisdictional entity.

4.2 Cumulative Impact Assessment

4.2.1 Proposed Action:

The geographic area for this cumulative impact analysis is defined as that portion of hydrographic basin 212 identified for attainment demonstration, also defined as the BLM disposal boundary. This geographic area contains approximately 41,161.193 acres of the 46,701 acres of BLM-managed lands analyzed in the Disposal EIS. This is the area where the vast majority of the community development will occur. The BLM does not consider the sale/conveyance of the subject lands as a growth-inducing action, because Las Vegas is growing independent of any land BLM may sell at auction; see Exhibit 4, Population Change and Distribution.

Resources were analyzed on Pages 4-58 through 4-66 of the Disposal EIS for the cumulative impacts associated with disposal actions for all remaining BLM lands in the Las Vegas Valley Disposal Area, and these analyzes are incorporated by reference. Specific details of that analysis will be presented where appropriate.

A. Botany

Disposal and future development of BLM lands would lead to the loss of from 90% up to 100% of the native vegetation within the Las Vegas Disposal Area, depending on future development. It is expected that approximately 10% of the land would remain in its natural state. This loss of native vegetation habitat would represent less than 1% of the total habitat existing within the Las Vegas planning area.

B. Threatened & Endangered Species / Special Status Species

Impacts of land sale/conveyance on the desert tortoise Mojave population were analyzed under the Las Vegas Valley Programmatic Biological Opinion (1-5-96-F-023R.3 as amended). That biological opinion determined that the loss of approximately 125,000 acres of desert tortoise habitat in the Las Vegas Valley would not jeopardize the continued existence of the species. No critical habitat for the species will be affected.

The Las Vegas Valley is not likely to contain the majority of any common wildlife species' population. The loss of 2880 acres of habitat would represent a negligible loss of the 4,900 square miles (3.12 million acres) of similar habitat estimated to occur in Clark County; therefore, it is expected that the proposed action will result in minimal contribution to declines of common wildlife species.

Banded Gila monster, Western Burrowing Owl and Phainopepla habitat will likely continue to be lost in the Valley as BLM land is disposed of and as associated rights-of-way are granted as well as leases authorized under the Recreation and Public Purpose Act, 43 U.S.C.§§ 869 et seq. Banded Gila monster, Western Burrowing Owl and Phainopepla habitat occurs in Nevada outside the Las Vegas Valley but within Areas of Critical Environmental Concern and National Conservation Areas in Nevada, as well as within Valley of Fire State Park, thereby receiving a greater level of protection from future threats. Therefore, the loss of such habitat in the Valley would not result in a critical reduction of habitat for these species.

C. Migratory Bird Treaty

The Las Vegas Valley is not likely to contain the majority of any migratory bird species' population. The loss of 2880 acres of habitat would represent a negligible loss of the 4,900 square miles of similar habitat estimated to occur in Clark County; therefore, it is expected that the proposed action will result in minimal contribution to migratory bird population declines.

D. Soils

Page 4-60 of the Disposal EIS notes that 95% of the BLM managed land had less than 20% soil disturbance. Once lands are developed there is typically less soil erosion than on undeveloped land. Land that is disturbed and not developed contributes approximately 40% of the overall emissions in the Las Vegas Valley.

Disposal and future development of BLM managed lands would lead to the disturbance of 90% of the Las Vegas Valley soil surfaces located within the Las Vegas Disposal Area. It is expected that approximately 10% of the land would remain in its natural state. As the lands are developed from natural areas to urbanized settings, construction and grading activities will disturb large areas. These temporarily disturbed areas will be stabilized as streets and sidewalks are paved, buildings and other structures are built, urbanized areas are landscaped, flood control conveyances are constructed, etc. The BLM Las Vegas RMP/EIS does recommend erosion control measures be implemented during construction to minimize soil loss while these temporary disturbances occur as lands are developed.

E. Air Quality

A cumulative impacts analysis was completed in the Disposal EIS on pages 4-59 through 4-60 for complete sale/conveyance of BLM land within the current disposal boundary and development of 70,000 acres of land. The model used by Argonne National Laboratory's assessed cumulative impacts of development in the Las Vegas Valley. The result of this modeling indicates the Las Vegas Valley would be in attainment for PM_{10} by the year 2006. The model also predicts a decrease of 0.5% for CO, which has not exceeded the standard for 5 years now, and that by 2009 and out to 2018, the area would be in compliance with the O_3 standard.

F. Water Resources

A cumulative impacts analysis was completed in both the Disposal EIS on page 4-61 and the RMP on pages 4-55 to 4-56, which addressed the increased water demand expected, based on

development of 54,000 acres of private land and 26,000 acres of currently Federal land which would be subsequently developed when privatized. Over a 20-year period it is expected that an additional 200,000 acre-feet of water may be required to meet future demands for water. The SNWA is also working with the Secretary of the Interior to acquire additional water rights from Lake Mead to meet projected future needs.

All projections for water use, which may result from the sale/conveyance of the project area analyzed in this EA, fall within the estimate regarding water use projected in connection with disposal of all the Federal lands identified for disposal within the disposal boundary, as presented in the RMP and Disposal EIS.

Page 4-61 of the Disposal EIS states in part, "Development within the disposal boundary area would most likely cause fill to waters of the US if permitted by the US Army Corps of Engineers." This could cause increased runoff and storm water flow velocities, which could cause increased sedimentation and convey constituents downstream that could reduce water quality.

G. Floodplains

The cumulative impact of the development of the project area on floodplains could be increased as to the volume, depth, velocity, and duration of flooding. However, these impacts will be mitigated during development of the area by the developer, as required by local government and collectively through a regional authority. This mitigation will be in the form of construction of adequate flood control facilities that could include underground drainage pipes, channel stability measures, surface impoundments, or other features. The Clark County Department of Development Services reviews the design for these facilities.

H. Cultural and Paleontological Resources

No historic properties or Native American concerns were identified within the sale/conveyance parcel. The action as proposed will have no effect to historic properties.

Fossil remains are apparent on the surface of the sale/conveyance parcel and there is a high probability that fossils lie beneath. Clark County plans to avoid impacts to fossil resources by restricting construction activities to those areas lying outside the wash.

I. Noxious Weeds

A long range weed plan approved by the BLM needs to be in place contingent to the transfer of these lands. Weed management must control and contain weed populations, to protect the adjacent public lands from infestation. Land disturbance is a primary activity that invites weed establishment, and the weed management plan should address control measures throughout the ground breaking and construction phase to minimize the potential effects, as well as provide an ongoing assessment and treatment protocol. The Desert National Wildlife Refuge to the north and the conservation areas to the south are both sensitive areas of concern for ecological integrity.

J. Transportation

Transportation patterns and traffic management will be determined by the jurisdictional entity. Federal, State, and Local laws, regulations and ordinances will be applied and enforced by the jurisdictional entity.

K. Noise

Noise generated by the development of this property will be managed like any other master plan developed community in Las Vegas, Nevada. Federal, State, and Local laws, regulations and ordinances will be applied and enforced by the jurisdictional entity.

4.2.2 No Action Alternative:

The geographic area for this cumulative impact analysis will be the same, the 2,880 acre parcel except for the Air resource. Argonne National Labs used in the air modeling study to perform cumulative assessments of future air quality trends in the Las Vegas Valley. The entire geographic area contains approximately 41,170.681 acres of the 46,701 acres of BLM-managed lands. The BLM would not consider the disposal of the subject lands as a growth-inducing action, because Las Vegas is growing independent of any land BLM may sell at action.

A. Botany

Disposal and future development of BLM lands would lead to the loss of from 90% up to 100% of the native vegetation within the Las Vegas Disposal area, depending on future development. It is expected that approximately 10% of the land would remain in its natural state. This loss of native vegetation habitat would represent less than 1% of the total habitat existing within the Las Vegas planning area. There would be no impact to rare plants as know were found on the site.

B. Threatened & Endangered Species / Special Status Species

Impacts of lands sales on the desert tortoise Mojave population were analyzed under the Las Vegas Valley Programmatic Biological Opinion (1-5-96-F-023R.3 as amended). That biological opinion determined that the loss of approximately 125,000 acres of desert tortoise habitat in the Las Vegas Valley would not jeopardize the continued existence of the species. No critical habitat for the species will be affected.

The continued development of 4,800 acres of land per year would result in the permanent loss of special status wildlife species habitat. Development of BLM lands will lead to the loss of from 90% up to 100% of the native vegetation within the Las Vegas Disposal area. The Las Vegas Valley is not likely to contain the majority of any species' population. The loss of 125,000 acres of habitat would represent a loss of approximately 4% of the 4,900 square miles (3.12 million acres) of similar habitat estimated to occur in Clark County; therefore, it is expected that the proposed action will result in minimal contribution to declines of common wildlife species. Banded Gila monster and western burrowing owl habitat will likely continue to be lost in the Valley as BLM land is disposed. Banded Gila Monster and Western Burrowing Owl habitat occurs in Nevada outside the Las Vegas Valley but within Areas of Critical Environmental

Concern and National Conservation Areas in Nevada, as well as within Valley of Fire State Park, thereby receiving a greater level of protection from future threats. Therefore, the loss of such habitat in the Valley would not result in a critical reduction of habitat for these species.

C. Migratory Bird Treaty Act

The future development of BLM managed lands will lead to the loss of from 90% up to 100% of the native vegetation within the Las Vegas disposal area. It is not known at this time if wildlife would continue to inhabit any native vegetation areas not developed over time. The Las Vegas Valley is not likely to contain the majority of any species' population. The loss of 70,000 acres of habitat by 2018 would represent a loss of approximately 2.23 percent of the 4,900 square miles of similar habitat estimated to occur in Clark County; therefore, it is expected that the proposed action will result in minimal contribution to wildlife population declines.

D. Soils

BLM determined that 95% of the BLM managed land had less than 20% soil disturbance. Once lands are developed there is typically less soil erosion than on undeveloped land. Land that is disturbed and not developed contributes approximately 40% of the overall emissions in the Las Vegas Valley.

Disposal and future development of BLM managed lands would lead to the disturbance of 90% of the Las Vegas Valley soil surfaces located within the Las Vegas Disposal area. It is expected that approximately 10% of the land would remain in its natural state. As the lands are developed from natural areas to urbanized settings, construction and grading activities will disturb large areas. These temporarily disturbed areas will be stabilized as streets and sidewalks are paved, buildings and houses are built, urbanized areas are landscaped, flood control conveyances are constructed, etc.

E. Air Quality

Cumulative impacts analysis was completed in the RMP on pages 4-53 to 4-55, which addressed both PM10 and CO increases over the next 20 years, based on 25,540 acres of public land disposal and 54,000 acres of private land development over the same period and is tiered to and incorporated by reference. It is clear from the analysis that the use of best management practices and any new technology may be required to ensure SIP budgets are not exceeded. The BLM will work closely with the CCDAQM on any land disposal action within the non-attainment area. The following formulas were used to calculate the emissions for the criteria pollutants for the designated land use. The formulas are a function of assumed (percentage of total land sale assigned to given land use and construction duration) and calculated (emission factors) parameters.

Total Emissions (Tons) = Emission Factor x Total Acreage (given land use)

Total Emissions (Tons/Year) = Total Emissions (Tons) / Construction Duration (10 Years)

The calculated emissions are intended as estimates based on trends in development within the

Las Vegas Valley. These estimates may or may not represent the final development that occurs
on the lands, but these projections are reasonable, based on past and future development
proposed within the Las Vegas Valley. The 4,800 acres was provided by Clark County Planning

Staff as the number of acres that are currently being developed each year as of 2002. This disposal number can fluctuate over time.

CRITERIA POLLUTANT EMISSION ESTIMATES IN TONS/YEAR FOR DEVELOPMENT OF 4800 ACRES IN ONE YEAR

Criteria Pollutant	Single Family Home 65% 3120 ac	Office Building 624 ac	Convenience Store 2% 96 ac	Apartment Complex 15% 720 ac	Moderate Casino 3% 144 ac	City Park 96 ac 2%	Totals 4,800 ac
СО	1,154	181	518	986	153	1	2,993
NOx	3,557	537	842	3,132	367	2	8,437
SO2	250	44	16	230	22	1	536
VOC	718	156	655	677	151	1	2,358
PM10	1,373	281	794	1,166	216	8	3,838
PM2.5	499	87	178	389	59	3	1,215

Regional Significance as Defined By EPA

As demonstrated by the analysis, development occurring in one-year would not result in emissions that would be considered "regionally significant" with regard to air pollution emissions. EPA defines an action to have a regionally significant impact if air emissions will exceed 10% of the total regional emissions budget for a criteria pollutant.

The regionally significant thresholds within the attainment demonstration area are 17,800 tons/year for PM $_{10}$ and 12,100 tons/year for CO, based on the total budgets identified in the SIP, for the attainment demonstration area. Estimated emissions for the development of 4,800 acres of land over a one-year time period are 3,838 tons of PM10 and 2,993 tons of CO, well below the 10% threshold set by EPA. Therefore, impacts from both BLM and Private development are unlikely to become regionally significant. It is important to note that even using all lands developed in one year there still is not an issue with regional significance. All other criteria pollutants fall within acceptable limits, and the Las Vegas Valley is in attainment for each of these pollutants

F. Water Resources

A cumulative impact analysis in the RMP on pages 4-55 to 4-56, which addressed the increased water demand expected, based on development of 54,000 acres of private land and 26,000 acres of currently Federal land which would be subsequently developed when privatized was assessed. Over a 20-year period it is expected that an additional 200,000 acre-feet of water may be required to meet future demands for water. The SNWA is also working with the Secretary of the Interior to acquire additional water rights from Lake Mead to meet projected future needs. All projections for water use, which may result from the disposal of the subject lands analyzed in this EA, fall within the estimate regarding water use projected in connection with disposal of all the Federal lands identified for disposal within the disposal boundary, as presented in the RMP and Disposal EIS.

Development within the disposal boundary area would most likely cause fill to waters of the US if permitted by the US Army Corps of Engineers." This could cause increased runoff and storm water flow velocities, which could cause increased sedimentation and convey constituents

downstream that could reduce water quality.

G. Floodplains

The cumulative impact of the proposed land disposal on floodplains could be increased as to the volume, depth, velocity, and duration of flooding. However, these impacts will be mitigated during development of the parcel, as required by local government or collectively through a regional authority. This mitigation will be in the form of construction of adequate flood control facilities that could include underground drainage pipes, channel stability measures, surface impoundments, or other features. The Clark County Department of Development Services reviews the design for these facilities.

H. Cultural and Paleontological Resources

No historic properties or Native American concerns were identified within the sale/conveyance parcel. The action as proposed will have no effect to historic properties.

Fossil remains are apparent on the surface of the sale/conveyance parcel and there is a high probability that fossils lie beneath. Clark County plans to avoid impacts to fossil resources by restricting construction activities to those areas lying outside the wash.

I. Environmental Justice

The neighborhoods surrounding the various parcels of the subject lands were evaluated for the presence of potential issues relevant to Environmental Justice. No developments are within 1 mile of the 2,880 parcel. The private parcels adjacent to the subject lands are undeveloped. Therefore, there are no environmental justice issues relative to the disposal of the subject lands.

J. Transportation

Transportation patterns and traffic management will be determined by the jurisdictional entity. Federal, State, and Local laws, regulations and ordinances will be applied and enforced by the jurisdictional entity.

K. Noise

Noise generated by the development of this property will be managed like any other master plan developed community in Las Vegas, Nevada. Federal, State, and Local laws, regulations and ordinances will be applied and enforced by the jurisdictional entity.

4.3 Description of Mitigation Measures and Residual Impacts

Under the terms and conditions of the Biological Opinion, no mitigation fee is collected upon the sale/conveyance of this land. The fees will be collected prior to development in accordance with the Clark County MSHCP.

See page 3 of Reasonable and Prudent Measures of Appended Biological Opinion #1-5-96-F-023R.3.APD19 for additional mitigation.

Residual impacts to air quality include a short-term increase in dust emissions from construction phases of any development of the land and vehicle activity. In addition, an increase in hydrocarbon and combustion emissions from internal combustion engines would be expected in the project area. No long-term residual adverse effects on Air Resources are expected from the proposed action. The impacts are expected to occur during development after the land is sold. Once developed, the dust emissions would be minimal to none for the entire project area and a slight increase in VOCs would be expected due to vehicle combustion during construction, however are temporary in nature.

The land purchaser will be required to take measures to control fugitive dust, in compliance with the Clark County DAQEM permitting regulations for construction activity.

5. Persons/Agencies Consulted:

BLM, LVFO Staff Specialists

Mark Slaughter, Wildlife Management Biologist
Katharine Kleinick, Natural Resources Specialist
Carolyn Ronning, MSHCP Coordinator
Susanne Rowe, Archaeologist
Sarah Peterson, Hydrologist
Lisa Christianson, Environmental Protection/Air Quality
Michael Moran, Environmental Protection/HazMat Specialist
Fred Edwards, Botanist
Nora Caplette, Acting Weed Coordinator
Jeffrey Steinmetz. Lead Planning and Environmental Coordinator
Anna Wharton, Supervisory Realty Specialist

Clark County

Wendy Fenner, P.E., Principal Civil Engineer, Public Works Design Division Don Turner, Clark Shooting Park Manager, Parks and Recreation

Local Citizens

Lorraine Lennard Robert Hall

6.0 References

Clark County, Carbon Monoxide State Implementation Plan, August 2000

Clark County, PM10 State Implementation Plan, 2002

Clark County Department of Comprehensive Planning. *Southern Nevada Consensus Population Estimate*, July 2001.

Clark County Regional Flood Control District (CCFRCD) Supplemental Programmatic EIS 2002 Master Plan Update (September, 2004)

Coache, Robert, P.E., 2001. *Las Vegas Valley Water Usage Report, Clark County Nevada*. State of Nevada Division of Water Resources.

Las Vegas Valley Water District (LVVWD), 2002. *Las Vegas Valley Water District Artificial Recharge Report, 2001 Year End Report.* Submitted to Nevada Division of Water Resources. Las Vegas Resource Management Plan and Final EIS, BLM October1998.

Las Vegas Valley Disposal Boundary EIS, December 23, 2004.

Southern Nevada Water Authority (SNWA), 2002. 2002 Water Resource Plan. March.

SNWA Draft Drought Plan, January 2003, Supplement to the SNWA 2002 Water Resource Plan Steinberg, Peter, 2001. Prosopis glandulosa. In: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station, Fire Sciences Laboratory (2003, June). Fire Effects Information System, [Online]. Available: http://www.fs.fed.us/database/feis/

Clark County Department of Public Works, Noise Assessment Report for Clark County Shooting Park, dated February 16, 2009. Prepared by Parsons, Pasadena, California.

Clark County Department of Public Works, Special Event Traffic Management Plan for Clark County Shooting Park, dated July 2, 2007. Prepared by Poggemeyer, Las Vegas, Nevada.

Callister & Reynolds – Attorneys at law, *Review of the Results and Conclusions Presented in the Report Titled: Noise Assessment Report for Clark County Shooting Park, Prepared by Parsons, Pasadena, CA, February 16, 2009*, Prepared by DDR, Inc - Consultants in Acoustics & Vibration, Douglas D. Reynolds, PhD.